

## SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE SUBSTITUTE

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FOR

HOUSE BILLS NOS. 1654 &amp; 1156

AN ACT

To repeal sections 191.900, 191.910, 197.367, 198.006, 198.012, 198.022, 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073, 198.080, 198.082, 198.085, 198.086, 198.088, 198.090, 198.093, 198.525, 198.526, 198.531, 198.532, 208.156, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 630.140, 630.167, 660.050, 660.263, 660.270, 660.300, 660.305, 660.315, 660.317 and 660.320, RSMo, relating to protection of the elderly, and to enact in lieu thereof fifty-eight new sections relating to the same subject, with penalty provisions.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section A. Sections 191.900, 191.910, 197.367, 198.006, 198.012, 198.022, 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073, 198.080, 198.082, 198.085, 198.086, 198.088, 198.090, 198.093, 198.525, 198.526, 198.531, 198.532, 208.156, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 630.140, 630.167, 660.050, 660.263, 660.270, 660.300, 660.305, 660.315, 660.317 and 660.320, RSMo, are repealed and fifty-eight new sections enacted in lieu thereof, to be known as sections 187.010, 187.015, 187.020, 187.024, 187.028, 187.030, 187.034, 187.040, 187.050, 187.080, 187.084, 187.087, 187.090, 187.102,

191.900, 191.910, 198.006, 198.012, 198.019, 198.022, 198.029, 198.030, 198.032, 198.036, 198.039, 198.067, 198.073, 198.074, 198.080, 198.082, 198.085, 198.086, 198.088, 198.090, 198.093, 198.345, 198.525, 198.526, 198.531, 198.532, 208.156, 210.933, 210.936, 344.050, 354.407, 491.076, 565.200, 630.140, 630.167, 660.030, 660.050, 660.252, 660.263, 660.270, 660.302, 1, 2 and 3, to read as follows:

187.010. As used in this chapter unless the context clearly indicates otherwise, the following terms mean:

(1) "Abuse", the infliction of physical, sexual or emotional injury or harm, the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent, or the wasting of financial resources including financial exploitation;

(2) "Court", the circuit court;

(3) "Department", the Missouri department of health and senior services;

(4) "Director", the director of the department of health and senior services;

(5) "Eligible adult", a person sixty years of age or older who is unable to protect his or her own interest or adequately perform or obtain services which are necessary to meet his or her essential human needs or an adult with a disability defined in section 660.053, RSMo, between the ages of eighteen and fifty-nine who is unable to protect his or her own interests or adequately perform or obtain services which are necessary to meet his or her essential human needs;

(6) "Facility" or "long-term care facility", any

residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility;

(7) "Health care provider", any person delivering or purporting to deliver any health care, including any employee, agent or other representative of such person;

(8) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;

(9) "In-home services employee", a person employed by an in-home services provider agency;

(10) "In-home services provider agency", a business entity under contract with the department of social services or the department of health and senior services, or a Medicaid participation agreement, or an agency licensed by the department of health and senior services pursuant to sections 197.400 to 197.470, RSMo, that employs persons to deliver any kind of services provided for eligible adults in their private homes;

(11) "Intermediate care facility", any premises, other than a residential care facility I, residential care facility II or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board, personal care, and basic health and nursing care services under the daily supervision of a licensed nurse and under the direction of a licensed physician to three or more residents dependent for care and supervision and who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility;

(12) "Least restrictive environment", a physical setting

where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;

(13) "Likelihood of serious physical harm", one or more of the following:

(a) A substantial risk that physical harm to an eligible adult will occur because of such adult's failure or inability to provide for his or her essential human needs as evidenced by acts or behavior which has caused such harm or which gives another person probable cause to believe that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself or herself, as evidenced by recent credible threats, acts or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by another upon an eligible adult as evidenced by recent acts or behavior which has caused such harm or which gives another person probable cause to believe the eligible adult will sustain such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his financial resources by another person;

(14) "Neglect", the failure to provide services to an eligible adult by any person, firm, or corporation with a legal

or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result;

(15) "Protective services", services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his or her essential human needs;

(16) "Resident", a person who by reason of aging, illness, disease or physical or mental infirmity receives or requires care and services furnished by a facility and who resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding twenty-four consecutive hours;

(17) "Residential care facility I", any premises, other than a residential care facility II, intermediate care facility or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour care to three or more residents, who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility and who need or are provided with shelter, board and with protective oversight, which may include storage and distribution or administration of medications and care during short-term illness or recuperation;

(18) "Residential care facility II", any premises, other than a residential care facility I, an intermediate care facility or a skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board and care to three or more residents who are not related

within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility and who need or are provided with supervision of diets, assistance in personal care, storage and distribution or administration of medications, supervision of health care under the direction of a licensed physician and protective oversight, including care during short-term illness or recuperation;

(19) "Skilled nursing facility", any premises, other than a residential care facility I, a residential care facility II or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four hour accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four hours a day care by licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill.

187.015. The department may promulgate rules necessary to implement the provisions of this chapter. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

187.020. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, nurse practitioner, physician's assistant, nurse, hospital and clinic personnel engaged in examination, care or treatment of persons, other health practitioners, medical examiner, coroner, psychologist, mental health professional, social worker, minister, Christian Science practitioner, pharmacist, physical therapist, facility administrator, employee in a facility or employee of the department of social services, the department of health and senior services, or the department of mental health, in-home services owner, operator or employee, adult day care worker, probation or parole officer, peace officer, law enforcement official, or other person with responsibility for the care of a person sixty years of age or older or an eligible adult believes or has reasonable cause to believe that such person or adult, including a resident of a long-term care facility, an individual residing in their home or residence, or an in-home services client, has been abused or neglected, he or she shall, within twenty-four hours, report or cause a report to be made to the department.

2. In addition to those persons required to report pursuant to subsection 1 of this section, any other person who believes or has reasonable cause to believe that a person sixty years of age or older or an eligible adult, a resident of a long-term care facility or an in-home services client has been abused or neglected may report such information to the department.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who

knowingly fails to make a report within a reasonable time as required in this section is guilty of a class A misdemeanor.

4. Every person who has been previously convicted of or pled guilty to making a false report to the department and who is subsequently convicted of making a false report pursuant to this section is guilty of a class D felony.

5. Anyone, except any person who has abused or neglected a resident in a long-term care facility, an individual residing in their home or residence, or an in-home services client, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose. Any person who purposely files a false report of elder abuse or neglect pursuant to this section or section 187.030 is guilty of a class A misdemeanor.

6. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.

7. The department shall maintain statistics based on all death certificates and shall distribute or report to the division of health standards and licensure on details of persons over age sixty-five.

187.024. 1. If a report made pursuant to section 187.020 involves a resident of a long-term care facility, the report shall contain, if known, the name and address of the facility,



the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant and any other information which might be helpful in an investigation.

2. Upon receipt of a report pursuant to section 187.020 involving a resident of a long-term care facility, the department shall initiate an investigation within twenty-four hours and, as soon as possible during the course of the investigation, shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated unless such resident's next of kin is the alleged perpetrator of the abuse or neglect. For reports involving imminent harm, the department shall commence an on-site investigation within twenty-four hours. As provided in section 187.030, suspected reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency.

3. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte

order granting the department authority for the temporary care and protection of the resident for a period not to exceed thirty days.

4. Reports shall be confidential except pursuant to lawful subpoena, as provided in section 187.087, provided that the information in subsections 1 and 3 of this section shall be reported to any person with durable power of attorney for or any person with legal guardianship for a resident who is the subject of the complaint and investigation unless such person is the alleged perpetrator of the abuse or neglect, or if the resident objects.

5. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified orally or in writing of its receipt and of the initiation of the investigation.

6. No person who directs or exercises any authority in a facility shall evict, harass, dismiss, or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing department information and referral telephone contact line, residents, their families, and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

7. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of a class D felony.

8. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 187.080 to have recklessly, knowingly, or purposely abused or neglected a resident, including persons employed in any facility.

9. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hot line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

187.028. 1. If a report is made pursuant to section 187.020 that involves an eligible adult not residing in a facility, the report shall contain, if known, the names and addresses of the eligible adult, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which may be helpful in an investigation. In addition, if a report made pursuant to section 187.020 involves an eligible adult who is also an in-home services client, the report shall also contain the names and addresses of the in-home services provider agency and the in-home services employee. If the report is made by a physician of the in-home services client, then the department shall maintain contact with the physician regarding the progress of the investigation. When a report of

suspected abuse or neglect of an in-home services client is received by the department, the client's case manager and the department nurse shall be notified. The client's case manager shall investigate and immediately report the results of the investigation to the department nurse. The department may authorize the in-home services provider nurse to assist the case manager with the investigation.

2. Upon receipt of a report pursuant to section 187.020 involving the eligible adult not residing in a facility, the department shall initiate a prompt and thorough investigation.

3. If the investigation indicates possible abuse or neglect of the eligible adult not residing in a facility, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the eligible adult not residing in a facility from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the eligible adult not residing in a facility in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of an eligible adult not residing in a facility, for a period not to exceed thirty days.

4. If such person is an in-home services employee and has

been determined guilty by a court, and if the supervising in-home services provider willfully and knowingly failed to report known abuse by said employee to the department, then the supervising in-home services provider may be subject to administrative penalties of one thousand dollars per violation. The department shall establish a quality assurance and supervision process for clients. The process shall require an in-home services provider agency to verify compliance with program standards and verify the accuracy of records kept by an in-home services employee.

5. Reports shall be confidential except pursuant to lawful subpoena, as provided in section 187.087, provided that the information in subsections 1 and 3 of this section shall be reported to any person with durable power of attorney for or any person with legal guardianship for a resident who is the subject of the complaint and investigation unless such person is the alleged perpetrator of the abuse or neglect, or if the resident objects.

6. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified orally or in writing of its receipt and of the initiation of the investigation.

7. No person, including any person who directs or exercises any authority in an in-home services provider agency, shall harass, dismiss, or retaliate against an eligible adult not residing in a facility or an in-home services employee because the eligible adult, employee, or any member of his or her family has made a report of any violation or suspected violation of laws, standards, or regulations applying to the in-home services

provider agency or any in-home services employee which the eligible adult, employee, or family member thereof has reasonable cause to believe has been committed or has occurred.

8. Any person who knowingly abuses or neglects an eligible adult not residing in a facility shall be guilty of a class D felony.

9. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 187.080 to have recklessly, knowingly, or purposely abused or neglected an eligible adult not residing in a facility, including persons employed by an in-home services provider agency.

187.030. 1. The department shall investigate incidents and reports of elder abuse and neglect using the procedures established in sections 660.250 to 660.295, RSMo, and shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement agency and shall determine whether protective services are required pursuant to sections 660.250 to 660.295, RSMo.

2. The department and law enforcement agencies shall require training and cross-training of all investigatory personnel and other persons as deemed necessary regarding the proper handling of cases involving elder abuse. All noninvestigatory personnel and volunteers for local area agencies on aging shall be instructed on certain aspects of elder abuse, identification, and reporting procedures to ensure that such personnel and volunteers are able to recognize potential cases of

abuse or neglect and take the necessary steps to properly report elder abuse or neglect cases, including instruction related to the preservation of evidence. Nothing in this subsection shall be construed to require noninvestigatory personnel and volunteers to act in an investigatory capacity in investigations of elder abuse or neglect. The department, in cooperation with law enforcement agencies, shall, by rule, develop a checklist for department and law enforcement personnel to follow when investigating possible elder abuse.

3. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

187.034. Any person, official, or institution complying with the provisions of section 187.020 in the making of a report or in cooperating with the department in any of its activities pursuant to sections 187.020 to 187.050, except any person, official, or institution violating section 565.180, 565.182 or 565.184, RSMo, shall be immune from any civil or criminal liability for making such a report or in cooperating with the department, unless such person acted negligently, recklessly, in bad faith or with malicious purpose.

187.040. Any person while employed by a provider licensed pursuant to chapter 190 or 197, RSMo, or sections 660.400 to 660.420, RSMo, is finally determined to have recklessly, knowingly, or purposely abused, neglected, or financially exploited a person sixty years of age or older or an eligible adult shall be placed on the department's employee disqualification list.

187.050. 1. Any person having reasonable cause to believe that a misappropriation of property or funds of an eligible adult not residing in a facility or the falsification of any documents verifying in-home service delivery to such eligible adult has occurred shall report such information to the department.

2. For each report the department shall attempt to obtain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, the eligible adult not residing in a facility, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which may be helpful in an investigation.

3. Any in-home services provider agency or in-home services employee, or any person who puts to his or her own use or the use of the in-home services provider agency, or otherwise diverts any personal property or funds from an eligible adult not residing in a facility, or falsifies any documents for service delivery to an eligible adult not residing in a facility is guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall immediately initiate an investigation and report information to appropriate law enforcement agencies.

5. If the investigation indicates probable misappropriation of property or funds or falsification of any documents for service delivery of an eligible adult not residing in a facility, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action.



6. Reports shall be confidential except pursuant to lawful subpoena, as provided in section 187.087, provided that the information in subsections 1 and 2 of this section shall be reported to any person with durable power of attorney for or any person with legal guardianship for a resident who is the subject of the complaint and investigation unless such person is the alleged perpetrator of the abuse or neglect, or if the resident objects.

7. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

8. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified orally or in writing of its receipt and of the initiation of the investigation.

9. No person shall harass, dismiss, or retaliate against an eligible adult not residing in a facility or an in-home services employee because the eligible adult, employee, or any member of his or her family has made a report of any violation or suspected violation of laws, standards, or regulations applying to the in-home services provider agency or any in-home services employee which the eligible adult, employee, or family member thereof has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department to, pursuant to section 187.080, have knowingly misappropriated any property or funds or falsified any documents for service delivery of an eligible adult not residing in a facility, including persons employed by an in-home services provider agency.

187.080. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, such person shall be notified in writing mailed to the person's last known address that:

(1) An allegation has been made against the person, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) The person's name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the criteria contained in subsections 9 and 10 of this section.

3. If the person so notified wishes to challenge the

allegation, he or she may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without notice by the department, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date for hearing.

5. Any hearing shall be conducted in the county of the person's residence by the director of the department or the director's designee. For a contested case except those provisions or amendments which are in conflict with this section, the provisions of chapter 536, RSMo, shall apply to and govern the proceedings contained in this section and the rights and duties of the parties involved. The person appealing such an action shall be entitled to present evidence pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

6. Upon the record made at the hearing, the director of the department or the director's designee shall determine all questions presented and shall determine whether the person shall be listed on the employee disqualification list. The director shall clearly state the reasons for his or her decision and shall include a statement of findings of fact and conclusions of law pertinent to the questions in issue.

7. A person aggrieved by the decision following the hearing shall be informed of his or her right to seek judicial review as provided in chapter 536, RSMo. If the person fails to appeal the director's findings, those findings shall constitute a final determination that the person shall be placed on the employee disqualification list.

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department or one of its divisions.

9. The following persons shall receive an automatic lifetime listing on the employee disqualification list:

(1) Any person who has, within the past ten years, been convicted of, pled guilty to or nolo contendere to any felony stealing offense or any felony offense in chapter 187, 198, 334, 565, 566, 568, 573, or 660, RSMo, or section 570.145, RSMo;

(2) Based on substantiated reports:

(a) Any person who intentionally or negligently inflicts serious physical injury or causes the death of another person; or

(b) Any person who intentionally inflicts physical injury on another person.

10. Except as provided in subsection 9 of this section, the length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the following:

(1) Whether the person acted recklessly, knowingly, or purposely, as defined in chapter 562, RSMo;

(2) The degree of physical, sexual, or emotional injury or harm caused to a resident or eligible adult not residing in a facility; or the degree of the imminent danger to the health, safety, or welfare of a resident or eligible adult not residing in a facility;

(3) The degree of misappropriation of the property or funds or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances;

(6) Any aggravating circumstances; and

(7) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the department's requirements.

11. The removal of any person's name from the list pursuant to this section shall not prevent the director from keeping records of all acts finally determined to have occurred pursuant to this section.

12. The department shall provide the list maintained pursuant to this section to other state departments upon request

and to every local area agency on aging, or any person, corporation, or association who:

(1) Is licensed as an operator pursuant to chapter 198, RSMo;

(2) Provides in-home services under contract with the department of health and senior services or the department of social services;

(3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is approved by the department of health and senior services to issue certificates for nursing assistants training;

(5) Is an entity licensed pursuant to chapter 197, RSMo. The department shall inform any person listed above who inquires of the department whether a particular name is on the list. The department may require that the request be made in writing;

(6) Is an entity licensed pursuant to chapter 190, RSMo; or

(7) Is an adult day care program licensed pursuant to sections 660.400 to 660.420, RSMo.

13. No person, corporation, or association responsible for providing health care service shall knowingly employ any person who is on the employee disqualification list. Any such person, corporation, or association, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

14. Any employer who is required to discharge an employee

because the employee was placed on a disqualification list maintained by the department after the date of hire shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo. Upon a finding by the Missouri department of labor and industrial relations that substantiates the basis for an employee being listed on the disqualification list, such employee shall be deemed to have committed misconduct connected with work and shall be subject to the provisions of chapter 288, RSMo.

15. Any person who has been listed on the employee disqualification list, other than a person who has a lifetime listing, may request that the director remove his or her name from the employee disqualification list. The request shall be in writing and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an eligible adult not residing in a facility. The director or the director's designee may make conditional the removal of a person's name from the list on any terms that the director or the director's designee deems appropriate and failure to comply with such terms may result in the person's name being relisted. The director's or designee's determination of whether to remove the person's name from the list is not subject to appeal.

187.084. 1. For the purposes of this section, the term

"provider" means any person, corporation, or association who:

(1) Is licensed as an operator pursuant to chapter 198, RSMo;

(2) Provides in-home services under contract with the department of health and senior services or the department of social services;

(3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is an entity licensed pursuant to chapter 197, RSMo;

(5) Is a public or private facility, day program, residential facility, or specialized service operated, funded, or licensed by the department of mental health;

(6) Is an entity licensed pursuant to chapter 190, RSMo;

(7) Is an adult day care program licensed pursuant to sections 660.400 to 660.420, RSMo; or

(8) Employs persons who provide personal care assistance services. For purposes of this subdivision, "provider" does not include the individual receiving personal care assistance or any member of such individual's immediate family.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540, RSMo.

3. For any person hired for a full-time, part-time, or temporary position, including temporary employees hired through an employment agency, who will have contact with any patient or resident, the provider or the employment agency shall, within forty-eight hours and prior to such person or employee having any contact with a patient or resident:



(1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence; and

(2) Make an inquiry to the department, whether the person is listed on the employee disqualification list as provided in section 187.080.

4. When the provider requests a criminal background check pursuant to section 43.540, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check.

5. An applicant for a position to have contact with patients or residents of a provider shall:

(1) Sign a consent form as required by section 43.540, RSMo, so the provider may request a criminal records review;

(2) Disclose the applicant's criminal history. For purposes of this subdivision "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence, or any period of probation or parole; and

(3) Disclose if the applicant is listed on the employee

disqualification list as provided in section 187.080.

6. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and:

(1) The person has been convicted of, pled guilty to, or nolo contendere in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be:

(a) A felony stealing offense;

(b) Child abuse or neglect;

(c) A violation of subsection 3 of section 187.020;

(d) A felony violation of chapter 198, 334, 565, 566, 568, 569, or 573, RSMo;

(e) A violation of section 565.184, RSMo;

(f) A violation of section 568.020, RSMo; or

(g) A violation of section 570.145, RSMo; or

(2) The person or the person's foster care license has been refused, suspended, or revoked pursuant to section 210.496, RSMo, if such refusal, suspension, or revocation is related to care or protection of children; or

(3) The person is disqualified for employment by the department of mental health pursuant to section 630.170, RSMo.

7. A provider may use a private investigatory agency rather than the highway patrol to do a criminal history records review check, and alternatively, the applicant pays the private investigatory agency such fees as the provider and such agency shall agree.

8. The department shall promulgate rules to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.

9. Any provider that demonstrates a pattern of violation of this section shall be subject to the civil penalties established in section 197.455 or 198.067, RSMo, regardless of whether such violations have been or are being corrected. For purposes of this section only, a "pattern of violation" shall be established if a facility, at any time within a twelve-month period, receives two or more citations of knowing violations of this section by the department. The twelve-month period begins on the date of the first citation and ends twelve months thereafter.

187.087. 1. Reports confidential pursuant to this section, sections 187.020 to 187.034 and sections 187.050 and 187.080 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

(1) The complainant, resident, or the eligible adult not residing in a facility mentioned agrees to disclosure of his or her name;

(2) The department determines that disclosure is necessary to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an eligible adult not residing in a facility;

(3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;

(5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or

(6) Release of a name is requested by the division of family services within the department of social services for the purpose of licensure pursuant to chapter 210, RSMo.

2. The department shall, upon request, provide to the division of employment security within the department of labor and industrial relations copies of the investigative reports that led to an employee being placed on the disqualification list; except that copies of such reports shall not identify the reporter or the eligible adult referenced in the report.

187.090. The director or any person designated by the director, may require answers to written interrogatories and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant and material to any inspection or investigation. Failure to comply with any request of the department in connection with the investigation and inspection is a ground for refusal to issue a license or contract, or for the suspension or revocation of a license or contract.

187.102. Pursuant to sections 187.010 to 187.102, the department of health and senior services and the department of

mental health shall work cooperatively in the investigation of abuse and neglect, when appropriate.

191.900. As used in sections 191.900 to 191.910, the following terms mean:

(1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse" includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent;

(2) "Claim", any attempt to cause a health care payer to make a health care payment;

(3) "False", wholly or partially untrue. A false statement or false representation of a material fact means the failure to reveal material facts in a manner which is intended to deceive a health care payer with respect to a claim;

(4) "Health care", any service, assistance, care, product, device or thing provided pursuant to a medical assistance program, or for which payment is requested or received, in whole or part, pursuant to a medical assistance program;

(5) "Health care payer", a medical assistance program, or any person reviewing, adjusting, approving or otherwise handling claims for health care on behalf of or in connection with a medical assistance program;

(6) "Health care payment", a payment made, or the right under a medical assistance program to have a payment made, by a health care payer for a health care service;

(7) "Health care provider", any person [delivering, or purporting to deliver] who is paid to deliver or purports to

deliver, any health care, and including any employee, agent or other representative of such a person;

(8) "Medical assistance program", [any program to provide or finance health care to recipients which is established pursuant to title 42 of the United States Code, any successor federal health insurance program, or a waiver granted thereunder. A medical assistance program may be funded either solely by state funds or by state and federal funds jointly] any federal health care program, as defined in 42 U.S.C. Section 1320a-7b(f). The term "medical assistance program" shall include the medical assistance program provided by section 208.151, RSMo, et seq., and any state agency or agencies administering all or any part of such a program;

(9) "Person", a natural person, corporation, partnership, association or any legal entity.

191.910. 1. The attorney general shall have authority to investigate alleged or suspected violations of sections 191.900 to 191.910, and shall have all powers provided by sections 407.040 to 407.090, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section 191.905 are unlawful acts proscribed by chapter 407, RSMo, provided that if the attorney general exercises such powers, the provisions of section 407.070, RSMo, shall also be applicable; and may exercise all of the powers provided by subsections 1 and 2 of section 578.387, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section

191.905 involve "public assistance" as defined by section 578.375, RSMo. The attorney general and his authorized investigators shall be authorized to serve all subpoenas and civil process related to the enforcement of sections 191.900 to 191.910 and chapter 407, RSMo. In order for the attorney general to commence a state prosecution for violations of sections 191.900 to 191.910, the attorney general shall prepare and forward a report of the violations to the appropriate prosecuting attorney. [Upon receiving a referral, the prosecuting attorney shall either commence a prosecution based on the report by the filing of a complaint, information, or indictment within sixty days of receipt of said report or shall file a written statement with the attorney general explaining why criminal charges should not be brought. This time period may be extended by the prosecuting attorney with the agreement of the attorney general for an additional sixty days. If the prosecuting attorney commences a criminal prosecution, the attorney general or his designee shall be permitted by the court to participate as a special assistant prosecuting attorney in settlement negotiations and all court proceedings, subject to the authority of the prosecuting attorney, for the purpose of providing such assistance as may be necessary. If the prosecuting attorney fails to commence a prosecution and fails to file a written statement listing the reasons why criminal charges should not be brought within the appropriate time period, or declines to prosecute on the basis of inadequate office resources, the attorney general shall have authority to commence prosecutions for violations of sections 191.900 to 191.910. In cases where a

defendant pursuant to a common scheme or plan has committed acts which constitute or would constitute violations of sections 191.900 to 191.910 in more than one state, the attorney general shall have the authority to represent the state of Missouri in any plea agreement which resolves all criminal prosecutions within and without the state, and such agreement shall be binding on all state prosecutors.]

2. In any investigation, hearing or other proceeding pursuant to sections 191.900 to 191.910, any record in the possession or control of a health care provider, or in the possession or control of another person on behalf of a health care provider, including but not limited to any record relating to patient care, business or accounting records, payroll records and tax records, whether written or in an electronic format, shall be made available by the health care provider to the attorney general or the court, and shall be admissible into evidence, regardless of any statutory or common law privilege which such health care provider, record custodian or patient might otherwise invoke or assert. The provisions of section 326.151, RSMo, shall not apply to actions brought pursuant to sections 191.900 to 191.910. The attorney general shall not disclose any record obtained pursuant to this section, other than in connection with a proceeding instituted or pending in any court or administrative agency. The access, provision, use, and disclosure of records or material subject to the provisions of 42 U.S.C. section 290dd-2 shall be subject to said section, as may be amended from time to time, and to regulations promulgated pursuant to said section.



3. Sections 191.900 to 191.910 shall not be construed to prohibit or limit any other criminal or civil action against a health care provider for the violation of any other law. Any complaint, investigation or report received or completed pursuant to sections 198.070 and 198.090, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or sections 660.300 and 660.305, RSMo, which indicates a violation of sections 191.900 to 191.910, shall be referred to the attorney general. A referral to the attorney general pursuant to this subsection shall not preclude the agencies charged with enforcing the foregoing sections from conducting investigations, providing protective services or taking administrative action regarding the complaint, investigation or report referred to the attorney general, as may be provided by such sections; provided that all material developed by the attorney general in the course of an investigation pursuant to sections 191.900 to 191.910 shall not be subject to subpoena, discovery, or other legal or administrative process in the course of any such administrative action. Sections 191.900 to 191.910 take precedence over the provisions of sections 198.070 and 198.090, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, and sections 660.300 and 660.305, RSMo, to the extent such provisions are inconsistent or overlap.

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

(1) "Abuse", the infliction of physical, sexual, or emotional harm or injury [or harm], the taking, obtaining, using,

transferring, concealing, appropriating or taking possession of property of another person without such person's consent, or the wasting of financial resources;

(2) "Administrator", the person who is in general administrative charge of a facility;

(3) "Affiliate":

(a) With respect to a partnership, each partner thereof;

(b) With respect to a limited partnership, the general partner and each limited partner with an interest of five percent or more in the limited partnership;

(c) With respect to a corporation, each person who owns, holds or has the power to vote, five percent or more of any class of securities issued by the corporation, and each officer and director;

(d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

(4) "Department", the Missouri department of [social] health and senior services;

(5) "Dementia", a general term for the loss of thinking, remembering and reasoning so severe that it interferes with an individuals daily functioning. Symptoms may also include changes in personality, mood and behavior. Dementia is irreversible when caused by disease or injury but may be reversible when related to depression, drug interaction, thyroid, vitamin or nutrition imbalances;

(6) "Direct care", the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs;

(7) "Emergency", a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents of a facility;

[(6)] (8) "Facility", any residential care facility I, residential care facility II, [immediate] intermediate care facility, or skilled nursing facility;

[(7)] (9) "Health care provider", any person providing health care services or goods to residents and who receives funds in payment for such goods or services under Medicaid;

[(8)] (10) "Intermediate care facility", any premises, other than a residential care facility I, residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or manager to provide twenty-four hour accommodation, board, personal care, and basic health and nursing care services under the daily supervision of a licensed nurse and under the direction of a licensed physician to three or more residents dependent for care and supervision and who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility;

[(9)] (11) "Manager", any person other than the administrator of a facility who contracts or otherwise agrees with an owner or operator to supervise the general operation of a facility, providing such services as hiring and training personnel, purchasing supplies, keeping financial records, and making reports;

[(10)] (12) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in compliance with Title XIX, Public Law

89-97, 1965 amendments to the Social Security Act (42 U.S.C. 301 et seq.), as amended;

[(11)] (13) "Neglect", the failure to provide, by those responsible for the care, custody, and control of a resident in a facility, the services which are reasonable and necessary to maintain the physical and mental health of the resident, when such failure presents either an imminent danger to the health, safety or welfare of the resident or a substantial probability that death or serious physical harm would result;

[(12)] (14) "Operator", any person licensed or required to be licensed under the provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

[(13)] (15) "Owner", any person who owns an interest of five percent or more in:

(a) The land on which any facility is located;

(b) The structure or structures in which any facility is located;

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure in or on which a facility is located; or

(d) Any lease or sublease of the land or structure in or on which a facility is located.

"Owner" does not include a holder of a debenture or bond purchased at public issue nor does it include any regulated lender unless the entity or person directly or through a subsidiary operates a facility;

[(14)] (16) "Resident", a person who by reason of aging, illness, disease, or physical or mental infirmity receives or

requires care and services furnished by a facility and who resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding twenty-four consecutive hours;

[(15)] (17) "Residential care facility I", any premises, other than a residential care facility II, intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour care to three or more residents, who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility and who need or are provided with shelter, board, and with protective oversight, which may include storage and distribution or administration of medications and care during short-term illness or recuperation;

[(16)] (18) "Residential care facility II", any premises, other than a residential care facility I, an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board, and care to three or more residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility, and who need or are provided with supervision of diets, assistance in personal care, storage and distribution or administration of medications, supervision of health care under the direction of a licensed physician, and protective oversight, including care during short-term illness or recuperation;

[(17)] (19) "Skilled nursing facility", any premises, other than a residential care facility I, a residential care

facility II, or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four hour accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four hours a day care by licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill;

[(18)] (20) "Vendor", any person selling goods or services to a health care provider.

198.012. 1. The provisions of section 187.020, RSMo, and sections 198.003 to 198.136 shall not apply to any of the following entities:

(1) Any hospital, facility or other entity operated by the state or the United States;

(2) Any facility or other entity otherwise licensed by the state and operating exclusively under such license and within the limits of such license, unless the activities and services are or are held out as being activities or services normally provided by a licensed facility [under] pursuant to section 187.010, RSMo, and sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, except hospitals licensed [under] pursuant to the

provisions of chapter 197, RSMo;

(3) Any hospital licensed ~~[under]~~ pursuant to the provisions of chapter 197, RSMo, provided that the residential care facility II, intermediate care facility or skilled nursing facility are physically attached to the acute care hospital; and provided further that the department of health and senior services in promulgating rules, regulations and standards pursuant to section 197.080, RSMo, with respect to such facilities, shall establish requirements and standards for such hospitals consistent with the intent of this chapter, section 187.020, and sections 198.067, ~~[198.070,]~~ 198.090, 198.093 and 198.139 to 198.180 shall apply to every residential care facility II, intermediate care facility or skilled nursing facility regardless of physical proximity to any other health care facility;

(4) Any facility licensed pursuant to sections 630.705 to 630.760, RSMo, which provides care, treatment, habilitation and rehabilitation exclusively to persons who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disabilities, as defined in section 630.005, RSMo;

(5) Any provider of care under a life care contract, except to any portion of the provider's premises on which the provider offers services provided by an intermediate care facility or skilled nursing facility as defined in section 198.006. For the purposes of this section, "provider of care under a life care contract" means any person contracting with any individual to furnish specified care and treatment to the individual for the

life of the individual, with significant prepayment for such care and treatment.

2. Nothing in this section shall prohibit any of these entities from applying for a license [under] pursuant to sections 198.003 to 198.136.

198.019. When the department of health and senior services issues a license for or renews the existing license of a facility, the department of health and senior services shall:

(1) Require all facility operators and owners, including part owners, to include in the application for licensure or renewal of licensure a list of all long-term care facilities, whether located in this state or another state, for which the operators and owners currently have or have had a financial interest, excluding the facility for which licensure or renewal of licensure is sought;

(2) Determine and consider the compliance history of the facilities listed in the application pursuant to subdivision (1) of this section as facilities for which the owners and operators have or have had a financial interest. The department, based on the review of such compliance history, may deny licensure or renewal of licensure for the facility;

(3) Consider the compliance history of the operator of the facility and the facility for which licensure or renewal of licensure is sought. The department, based on the review of such compliance history, may deny licensure or renewal of licensure for the facility; and

(4) Include and consider any facility responses to survey findings in the official review made by the department.



198.022. 1. Upon receipt of an application for a license to operate a facility, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

(1) The statements in the application are true and correct;

(2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;

(3) The applicant has the financial capacity to operate the facility;

(4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;

(5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory;

(6) Neither the operator nor any principals involved in the operation of the facility have ever been convicted of a felony in

any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care;

(7) All fees due to the state have been paid.

2. Upon denial of any application for a license, the department shall so notify the applicant in writing, setting forth therein the reasons and grounds for denial.

3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. Except as otherwise provided for in section 198.526, the department shall make at least two inspections per year, at least one of which shall be unannounced to the operator. The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.136.

4. Whenever the department has reasonable grounds to believe that a facility required to be licensed under sections 198.003 to 198.096 is operating without a license, and the department is not permitted access to inspect the facility, or when a licensed operator refuses to permit access to the department to inspect the facility, the department shall apply to the circuit court of the county in which the premises is located for an order authorizing entry for such inspection, and the court shall issue the order if it finds reasonable grounds for

inspection or if it finds that a licensed operator has refused to permit the department access to inspect the facility.

198.029. The provisions of section 198.026 notwithstanding, whenever a duly authorized representative of the department finds upon inspection of a licensed facility, and the director of the department finds upon review, that the facility or the operator is not in substantial compliance with a standard or standards the violations of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result and which is not immediately corrected, the department shall:

(1) Give immediate written notice of the noncompliance to the operator, administrator or person managing or supervising the conduct of the facility and a copy of such notice to the attorney general at the time the noncompliance is found;

(2) Make public the fact that a notice of noncompliance has been issued to the facility. Copies of the notice shall be sent to appropriate hospitals and social service agencies;

(3) Send a copy of the notice of noncompliance to the division of family services of the department of social services, the department of mental health, and any other concerned federal, state or local government agencies. The facility shall post in a conspicuous location in the facility a copy of the notice of noncompliance and a copy of the most recent inspection report.

198.030. Notwithstanding any other law to the contrary, every residential care facility I and residential care facility II shall meet or exceed the federal requirements relating to the posting of deficiencies for federally certified skilled nursing

facilities and intermediate care facilities.

198.032. 1. Nothing contained in sections 187.020 to 187.050, RSMo, and sections 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical, social, personal or financial records of any resident in any facility, except when disclosed in a manner which does not identify any resident, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

(1) The department or any person or agency designated by the department;

(2) The attorney general;

(3) The department of mental health for residents placed to, from, or through that department;

(4) Any appropriate law enforcement agency;

(5) The resident, [his] the resident's guardian or conservator, or any other person designated by the resident; and

(6) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090.

2. Inspection reports and written reports of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with [section 198.070] sections 187.020 to 187.028, RSMo, and complaints received by the department relating to the quality of care of facility residents, shall be accessible to the public for examination and copying, provided that such

reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints. Unsubstantiated inspection reports, and written reports of investigations of complaints shall not be used by insurance carriers for purposes of insurance underwriting.

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording.

4. Although reports to the central registry may be made anonymously, the department shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect, attempt to obtain the name and address of any person making a report.

198.036. 1. The department may revoke a license in any case in which it finds that the operator:

(1) Failed or refused to comply with class I or II standards, as established by the department pursuant to section 198.085 or where the operator was cited for failure to comply with a particular class I standard on two different occasions within a twelve month period; [or]

(2) Failed or refused to comply with class III standards as

established by the department pursuant to section 198.085, where the aggregate effect of such noncompliances presents either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result or where the operator was cited for failure to comply with a particular class II or III standard on two different occasions within a twelve month period;

[(2)] (3) Refused to allow representatives of the department to inspect the facility for compliance with standards;

[(3)] (4) Knowingly acted or knowingly omitted any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident; or

[(4)] (5) Demonstrated financial incapacity to operate and conduct the facility in accordance with the provisions of sections 198.003 to 198.096.

2. Upon revocation of a license, the director of the department shall so notify the operator in writing, setting forth the reason and grounds for the revocation. Notice of such revocation shall be sent either by certified mail, return receipt requested, to the operator at the address of the facility, or served personally upon the operator. The department shall provide the operator notice of such revocation at least ten days prior to its effective date.

198.039. 1. Any person aggrieved by an official action of the department either refusing to issue a license or revoking a license may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo, et seq., except that the petition must be filed with the

administrative hearing commission within fifteen days after the mailing or delivery of notice to the operator. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the department.

2. The administrative hearing commission may stay the revocation of such license, pending the commission's findings and determination in the cause, upon such conditions, with or without the agreement of the parties, as the commission deems necessary and appropriate including the posting of bond or other security except that the commission shall not grant a stay or if a stay has already been entered shall set aside its stay, [if upon application of the department] unless the commission finds that the facility operator has established reason to believe that continued operation of a facility pending the commission's final determination would not present an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. In such cases, the burden of going forward with the evidence as well as the ultimate burden of persuasion is upon the facility. In any case in which the department has refused to issue a license, the commission shall have no authority to stay or to require the issuance of a license pending final determination by the commission.

3. The administrative hearing commission shall make the final decision as to the issuance or revocation of a license based upon the circumstances and conditions as they existed at the time of the alleged deficiencies and not based upon

circumstances and conditions after the time of the decision not to issue or revoke a license. Any person aggrieved by a final decision of the administrative hearing commission, including the department, may seek judicial review of such decision by filing a petition for review in the court of appeals for the district in which the facility is located. Review shall be had, except as modified herein, in accordance with the provisions of sections 621.189 and 621.193, RSMo.

198.067. 1. An action may be brought by the department, or by the attorney general on his or her own volition or at the request of the department or any other appropriate state agency, to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096, to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action brought pursuant to the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought pursuant to the provisions of this section no [less] later than fifteen days after the filing of the action.

2. The department or attorney general may bring an action in circuit court to recover a civil penalty against the licensed operator of the facility as provided by this section. Such action shall be brought in the circuit court for the county in which the facility is located. The circuit court shall determine the amount of penalty to be assessed within the limits set out in this section. Appeals may be taken from the judgment of the circuit court as in other civil cases.



3. The operator of any facility which has been cited with a violation of sections 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of Section 1396r of Title 42 of the United States Code or the regulations established pursuant thereto, is liable to the state for civil penalties of up to ten thousand dollars for each day that the violations existed or continue to exist, regardless of whether they are later corrected. Violations shall be presumed to continue to exist from the time they are found until the time the [division of aging] department finds them to have been corrected. The amount of the penalty shall be determined as follows:

(1) For each violation of a class I standard, not less than one hundred fifty dollars nor more than one thousand dollars;

(2) For each violation of a class II standard, not less than fifty dollars nor more than five hundred dollars;

(3) For each violation of a class III standard, not less than fifteen dollars nor more than one hundred fifty dollars;

(4) For each violation of a federal standard which does not also constitute a violation of a state law or regulation, not less than two hundred fifty dollars nor more than five hundred dollars;

(5) For each specific class I violation by the same operator which has been cited previously within the past twenty-four months and for each specific class II or III violation by the same operator which has been cited previously within the past twelve months, double the amount last imposed. As used in this [subdivision] subsection the term "violation"

shall mean a breach of a specific state or federal standard or statute which remains uncorrected and not in accord with the accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code. A judgment rendered against the operator of a facility pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

4. Any individual who willfully and knowingly certifies pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than one thousand dollars with respect to each assessment. Any individual who willfully and knowingly causes another individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than five thousand dollars with respect to each assessment.

5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not bar the imposition of any other remedy.

6. Penalties collected pursuant to this section shall be deposited in the [division of aging] elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such penalties shall not be considered a charitable contribution for tax purposes.

7. To recover any civil penalty, the moving party shall

prove by clear and convincing evidence that the violation occurred.

8. The licensed operator of a facility against whom an action to recover a civil penalty is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo, at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount of the civil penalty recommended by the moving party in its petition shall be reduced by twenty-five percent and the confessed judgment shall be entered by the circuit court at the reduced amount.

9. The amount of any civil penalty assessed by the circuit court pursuant to this section [~~shall~~] may be reduced by the amount of any civil monetary penalty which the licensed operator of the facility may establish it has paid pursuant to the laws of the United States for the breach of the same federal standards and arising out of the same conduct for which the state action is brought.

10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this section, any facility which is cited with a violation of a class I standard pursuant to subsection 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be

incurred immediately upon the citation of the violation and shall not be affected by any subsequent correction of the violation. For the purposes of this section, "serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

198.073. 1. [Except as provided in subsection 3 of this section, a residential care facility II or residential care facility I shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.] An individual may be accepted for residency in an assisted living facility I or assisted living facility II or remain in residence if the facility:

(1) Provides for or secures appropriate services to meet the scheduled and unscheduled needs of the resident;

(2) Has twenty-four hour staff appropriate in numbers and with appropriate skills to provide such services;

(3) Has a written plan for the protection of all residents in the event of disasters. Such plan may include keeping residents in place, evacuating residents to areas of refuge, evacuating residents from the building when necessary or other methods of protection based on the emergency and the individual building design; and

(4) Has written verification signed by the resident or by a family member or legal representative and the resident's

physician and the facility representative stating how the facility will meet the scheduled and unscheduled needs of the resident.

2. Notwithstanding the provisions of subsection 3 of this section, those persons previously qualified for residence who may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in [a residential care] an assisted living facility II or [residential care] assisted living facility I if approved by a physician.

3. [A residential care] An assisted living facility II may admit or continue to care for [those persons who are physically capable of negotiating a normal path to safety using assistive devices or aids when necessary but are mentally incapable of negotiating such a path to safety that have been diagnosed with Alzheimer's disease or Alzheimer's related] individuals with dementia that require assistance in order to evacuate in the event of a disaster, if the following requirements are met:

(1) [A family member or legal representative of the resident, in consultation with the resident's primary physician and the facility, determines that the facility can meet the needs of the resident. The facility shall document the decision regarding continued placement in the facility through written verification by the family member, physician and the facility representative;

(2)] The facility is equipped with an automatic sprinkler system, in compliance with National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an

automated fire door system and smoke alarms in compliance with 13-3.4 of the [1997] 2000 Life Safety Codes for Existing Health Care Occupancy;

[(3)] In a multilevel facility, residents who are mentally incapable of negotiating a pathway to safety are housed only on the ground floor;

(4)] (2) The facility shall take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds;

[(5)] The facility shall be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility. In meeting such staffing requirements, every resident who is mentally incapable of negotiating a pathway to safety shall count as three residents.]

(3) Staff shall be trained in disaster preparedness and on the facility's evacuation plan. A resident's service plan must include the means necessary for evacuation of the resident. Such service plan shall be reviewed annually with the resident, his or her legal representative and, as necessary, his or her family. All on-duty staff of the facility shall, at all times, be awake, dressed and prepared to assist residents in case of emergency;

[(6)] (4) Every resident [mentally incapable of negotiating a pathway to safety in the facility] with dementia that requires assistance in order to evacuate in the event of a disaster shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, or by an individual who holds a bachelor's

degree in social work, with an assessment [instrument utilized by the division of aging known as the minimum data set used for assessing residents of skilled nursing facilities] tool for community-based services for persons with dementia determined by the department of health and senior services:

- (a) Upon admission;
- (b) At least [semiannually] annually; and
- (c) When a significant change has occurred in the resident's condition which may require additional services;

[(7)] (5) Based on the assessment in subdivision [(6)] (4) of this subsection, a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, shall develop an individualized service plan for every resident [who is mentally incapable of negotiating a pathway to safety] with dementia that requires assistance in order to evacuate in the event of a disaster. Such individualized service plan shall be implemented by the facility's staff to meet the specific needs of the resident;

(6) Notwithstanding the provisions of subsection 2 of this section, a resident shall be moved to a skilled nursing facility when such resident requires twenty-four hour skilled nursing care;

[(8)] (7) Every facility shall use a personal electronic monitoring device for any resident whose physician recommends the use of such device;

[(9)] All facility personnel who will provide direct care to residents who are mentally incapable of negotiating a pathway to safety shall receive at least twenty-four hours of training

within the first thirty days of employment. At least twelve hours of such training shall be classroom instruction, with six classroom instruction hours and two on-the-job training hours related to the special needs, care and safety of residents with dementia;

(10) All personnel of the facility, regardless of whether such personnel provides direct care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at least four hours of in-service training, with at least two such hours relating to the care and safety of residents who are mentally incapable of negotiating a pathway to safety;]

(8) The facility shall comply with the training requirements pursuant to subsection 8 of section 660.050, RSMo;

[(11)] (9) Every facility shall make available and implement self-care, productive and leisure activity programs for persons with dementia which maximize and encourage the resident's optimal functional ability;

[(12)] (10) Every facility shall develop and implement a plan to protect the rights, privacy and safety of all residents and to prevent the financial exploitation of all residents[; and

(13) A licensee of any licensed residential care facility or any residential care facility shall ensure that its facility does not accept or retain a resident who is mentally incapable of negotiating a normal pathway to safety using assistive devices and aids that:

(a) Has exhibited behaviors which indicate such resident is a danger to self or others;

(b) Is at constant risk of elopement;



- (c) Requires physical restraint;
- (d) Requires chemical restraint. As used in this subdivision, the following terms mean:
  - a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms;
  - b. "Convenience", any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the resident's best interests;
  - c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing residents;
  - (e) Requires skilled nursing services as defined in subdivision (17) of section 198.003 for which the facility is not licensed or able to provide;
  - (f) Requires more than one person to simultaneously physically assist the resident with any activity of daily living, with the exception of bathing;
  - (g) Is bed-bound or chair-bound due to a debilitating or chronic condition.

4. The facility shall not care for any person unless such facility is able to provide appropriate services for and meet the needs of such person].

[5.] 4. Nothing in this chapter shall prevent a facility from discharging a resident who is a danger to himself or herself, or to others.

[6. The training requirements established in subdivisions (9) and (10) of subsection 3 of this section shall fully satisfy

the training requirements for the program described in subdivision (18) of subsection 1 of section 208.152, RSMo.

7. The division of aging]

5. The department of health and senior services shall promulgate rules to ensure compliance with this section and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

198.074. 1. Long term care facilities, residential care facilities I and residential care facilities II shall make immunizations for influenza and pneumonia available to residents sixty-five years of age or older, on-site on a yearly basis or upon admission. Written consent for such immunizations shall be given by the resident and his or her physician. The department shall prescribe by rule, the manner by which such facilities shall document compliance with this section, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making an immunization available if there is a shortage of that

immunization in this state as determined by the director of the department of health and senior services.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

198.080. [The division of aging shall develop flexible assessment procedures for individuals in long-term care and those considering long- term care services which follow the individual through the continuum of care, including periodic reassessment. By January 1, 2002, the division of aging shall promulgate rules and regulations to implement the new assessment system and shall make a report to the appropriate house and senate committees of the general assembly regarding the new assessment system. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to

delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.] The departments of health and senior services, social services, mental health, and elementary and secondary education shall work together to compare and evaluate their assessment procedures for individuals receiving long-term care services and those individuals considering long-term care services. Assessment procedures that are used for eligibility, care needs determination, placement, and funding of care shall be compared and evaluated. Following such evaluation, the departments shall work together to make changes in the assessments procedures utilized by each department to provide uniformity and equity of services so the care needs of individuals are met regardless of the program or department providing services and funding. The assessment of individuals with long-term care needs shall include, but is not limited to, the following:

(1) A comprehensive assessment of the individual's care needs and whether such needs are met or unmet; and

(2) An assessment of the individual's cognitive ability and the supports they would need to perform activities of daily living on a day-to-day basis; and

(3) An evaluation of the individual's support system in the community that could enable the individual to live in a community setting instead of an institution if the individual desires to be in a community setting; and

(4) Periodic reassessment of the individual's health, care

needs, and support system.

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care facility after January 1, 1980, shall have successfully completed a nursing assistant training program approved by the department [or shall enroll in and begin the first available approved training program which is scheduled to commence within ninety days of the date of the nursing assistant's employment] which shall be completed within six months of employment. Training programs shall be offered at a location most reasonably accessible to the enrollees in each class. The program may be established and carried out by the skilled nursing or intermediate care facility, by a professional organization, or by the department, and training shall be given by the personnel of the facility, by a professional organization, by the department, by any junior college or by the vocational education department of any high school. No program shall offer or provide training pursuant to this section unless the department has approved the program prior to the offering or provision of such training.

2. As used in this section the term "nursing assistant" means an employee, including a nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to provide or assist in the provision of direct resident health care services under the supervision of a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply to any person otherwise licensed to perform health care services under the laws of this state. It shall not apply to volunteers or to members of religious or fraternal orders which

operate and administer the facility, if such volunteers or members work without compensation.

3. The training program after January 1, 1989, shall consist of at least the following:

(1) A training program consisting of at least seventy-five classroom hours of training on basic nursing skills, clinical practice, resident safety and rights, the social and psychological problems of residents, and the methods of handling and caring for mentally confused residents such as those with Alzheimer's disease and related disorders, and one hundred hours supervised and on-the-job training. The one hundred hours shall be completed within six months of employment and may consist of normal employment as a nurse [assistants] assistant under the supervision of a licensed nurse; and

(2) Continuing in-service training to assure continuing competency in existing and new nursing skills. [All nursing assistants trained prior to January 1, 1989, shall attend, by August 31, 1989, an entire special retraining program established by rule or regulation of the department which shall contain information on methods of handling mentally confused residents and which may be offered on premises by the employing facility.]

4. Nursing assistants who have not successfully completed the nursing assistant training program prior to employment may begin duties as a nursing assistant only after completing an initial twelve hours of basic orientation approved by the department and may provide direct resident care only if under the general supervision of a licensed nurse prior to completion of the seventy-five classroom hours of the training program.

198.085. In establishing standards for each type of facility, the department shall classify the standards into three categories for each type of licensed facility as follows:

(1) Class I standards are standards the violation of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. Class I standards shall be divided into the following violation categories:

(a) Class I death violations which are violations of class I standards that have resulted in the death of a resident;

(b) Class I harm violations which are violations of class I standards that have resulted in serious physical harm to a resident; and

(c) Class I risk violations which are violations of class I standards that present an imminent danger to the health, safety, or welfare of a resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which have an indirect or a potential impact on the health, safety or welfare of any resident.

198.086. 1. The [division of aging] department of health and senior services shall develop and implement a demonstration project designed to establish a licensure category for health care facilities that wish to provide treatment to persons with Alzheimer's disease or Alzheimer's related dementia. The

division shall also:

(1) Inform potential providers of the demonstration project and seek letters of intent;

(2) Review letters of intent and select provider organizations to participate in the demonstration project. Ten such organizations may develop such projects using an existing license and additional organizations shall be newly licensed facilities with no more than thirty beds per project. One demonstration project shall be at a stand-alone facility of no more than one hundred twenty beds designed and operated exclusively for the care of residents with Alzheimer's disease or dementia within a county of the first classification with a charter form of government with a population over nine hundred thousand. A total of not more than three hundred beds may be newly licensed through the demonstration projects. All projects shall maintain their pilot status until a complete evaluation is completed by the [division of aging] department, in conjunction with a qualified Missouri school or university, and a written determination is made from such evaluation that the pilot project is successful;

(3) Monitor the participants' compliance with the criteria established in this section;

(4) Recommend legislation regarding the licensure of dementia-specific residential care based on the results of the demonstration project; and

(5) Submit a report regarding the [division's] department's activities and recommendations for administrative or legislative action on or before November fifteenth of each year to the



governor, the president pro tem of the senate and the speaker of the house of representatives.

2. The director of the [division of aging] department of health and senior services shall:

(1) Develop a reimbursement methodology to reasonably and adequately compensate the pilot projects for the costs of operation of the project, and require the filing of annual cost reports by each participating facility which shall include, but not be limited to, the cost equivalent of unpaid volunteer or donated labor;

(2) Process the license applications of project participants;

(3) Monitor each participant to assure its compliance with the requirements and that the life, health and safety of residents are assured;

(4) Require each participating facility to complete a minimum data set form for each resident occupying a pilot bed;

(5) Require the [division of aging] department to assign a single team of the same surveyors to inspect and survey all participating facilities at least twice a year for the entire period of the project; and

(6) Submit to the president pro tem of the senate and speaker of the house of representatives copies of any statements of deficiencies, plans of correction and complaint investigation reports applying to project participants.

3. Project participants shall:

(1) Be licensed by the [division of aging] department of health and senior services;

(2) Provide care only to persons who have been diagnosed with Alzheimer's disease or Alzheimer's related dementia;

(3) Have buildings and furnishings that are designed to provide for the resident's safety. Facilities shall have indoor and outdoor activity areas, and electronically controlled exits from the buildings and grounds to allow residents the ability to explore while preventing them from exiting the facility's grounds unattended;

(4) Be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility;

(5) Conduct special staff training relating to the needs, care and safety of persons with Alzheimer's disease or Alzheimer's related dementia within the first thirty days of employment;

(6) Utilize personal electronic monitoring devices for any resident whose physician recommends use of such device;

(7) Permit the resident's physician, in consultation with the family members or health care advocates of the resident, to determine whether the facility meets the needs of the resident;

(8) Be equipped with an automatic sprinkler system, in compliance with the National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an automated fire alarm system and smoke barriers in compliance with the [1997] 2000 Life Safety Codes for Existing Health Care Occupancy; and

(9) Implement a social model for the residential environment rather than an institutional medical model.

4. For purposes of this section, "health care facilities for persons with Alzheimer's disease or Alzheimer's related dementia" means facilities that are specifically designed and operated to provide elderly individuals who have chronic confusion or dementia illness, or both, with a safe, structured but flexible environment that encourages physical activity through a well-developed recreational and aging-in-place, and activity program. Such program shall continually strive to promote the highest practicable physical and mental abilities and functioning of each resident.

198.088. 1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that:

(1) There are written policies and procedures available to staff, residents, their families or legal representative and the public which govern all areas of service provided by the facility. The facility shall also retain and make available for public inspection at the facility to staff, residents, their families or legal representative and the public a complete copy of each official notification from the department of violations, deficiencies, licensure approvals, disapprovals, and responses, a description of services, basic rate and charges for any services not covered by the basic rate, if any, and a list of names, addresses and occupation of all individuals who have a proprietary interest in the facility;

(2) Policies relating to admission, transfer, and discharge of residents shall assure that:

(a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community

resources or other providers of care with which it is affiliated or has contracts;

(b) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

(c) Except in the case of an emergency, the resident, [his] the resident's next of kin, attending physician, and the responsible agency, if any, are consulted at least thirty days in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting [his] the resident's needs through other resources;

(3) Policies define the uses of chemical and physical restraints, identify the professional personnel who may authorize the application of restraints in emergencies and describe the mechanism for monitoring and controlling their use;

(4) Policies define procedures for submittal of complaints and recommendations by residents and for assuring response and disposition;

(5) There are written policies governing access to, duplication of, and dissemination of information from the resident's records;

(6) Each resident admitted to the facility:

(a) Is fully informed of his or her rights and responsibilities as a resident. Prior to or at the time of admission, a list of resident rights shall be provided to each resident, or [his] the resident's designee, next of kin, or legal

guardian. A list of resident rights shall be posted in a conspicuous location in the facility and copies shall be available to anyone upon request;

(b) Is fully informed in writing, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under the federal or state programs or not covered by the facility's basic per diem rate;

(c) Is fully informed by a physician of his or her health and medical condition unless medically contraindicated, as documented by a physician in his or her resident record, and is afforded the opportunity to participate in the planning of [his] the resident's total care and medical treatment and to refuse treatment, and participates in experimental research only upon [his] the resident's informed written consent;

(d) Is transferred or discharged only for medical reasons or for [his] the resident's welfare or that of other residents, or for nonpayment for [his] the resident's stay. No resident may be discharged without notice of his or her right to a hearing and an opportunity to be heard on the issue of whether [his] the resident's immediate discharge is necessary. Such notice shall be given in writing no less than thirty days in advance of the discharge except in the case of an emergency discharge. In emergency discharges a written notice of discharge and right to a hearing shall be given as soon as practicable and an expedited hearing shall be held upon request of the resident, next of kin, legal guardian, or nursing facility;

(e) Is encouraged and assisted, throughout [his] the

resident's period of stay, to exercise his or her rights as a resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff or to outside representatives of [his] the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) May manage [his] the resident's personal financial affairs, and, to the extent that the facility assists in such management, has [his] the resident's personal financial affairs managed in accordance with section 198.090;

(g) Is free from mental and physical abuse and neglect, and free from chemical and physical restraints except as follows:

a. When used as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psychosocial well-being;

b. When authorized in writing by a physician for a specified period of time; and

c. When necessary in an emergency to protect the resident from injury to himself or herself, or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician.

When restraints are indicated, devices that are least restrictive, consistent with the resident's total treatment program, shall be used;

(h) Is ensured confidential treatment of all information contained in [his] the resident's records, including information contained in an automatic data bank, and [his] the resident's written consent shall be required for the release of information

to persons not otherwise authorized under law to receive it;

(i) Is treated with consideration, respect, and full recognition of [his] the resident's dignity and individuality, including privacy in treatment and in care for [his] the resident's personal needs;

(j) Is not required to perform services for the facility;

(k) May communicate, associate and meet privately with persons of [his] the resident's choice, unless to do so would infringe upon the rights of other residents, and send and receive his or her personal mail unopened;

(l) May participate in activities of social, religious and community groups at [his] the resident's discretion, unless contraindicated for reasons documented by a physician in the resident's medical record;

(m) May retain and use [his] the resident's personal clothing and possessions as space permits;

(n) If married, is ensured privacy for visits by his or her spouse; if both are residents in the facility, they are permitted to share a room; and

(o) Is allowed the option of purchasing or renting goods or services not included in the per diem or monthly rate from a supplier of [his] the resident's own choice;

(7) The resident or [his] the resident's designee, next of kin or legal guardian receives an itemized bill for all goods and services actually rendered;

(8) A written account, available to residents and their families, is maintained on a current basis for each resident with written receipts for all personal possessions and funds received

by or deposited with the facility and for all disbursements made to or on behalf of the resident.

2. Each facility and the department shall encourage and assist residents in the free exercise of the resident's rights to civil and religious liberties, including knowledge of available choices and the right to independent personal decision. Each resident shall be given a copy of a statement of [his] the resident's rights and responsibilities, including a copy of the facility's rules and regulations. Each facility shall prepare a written plan to ensure the respect of each resident's rights and privacy and shall provide appropriate staff training to implement the plan.

3. (1) Each facility shall establish written procedures approved by the department by which complaints and grievances of residents may be heard and considered. The procedures shall provide for referral to the department of any complaints or grievances not resolved by the facility's grievance procedure.

(2) Each facility shall designate one staff member, employed full time, referred to in this subsection as the "designee", to receive all grievances when they are first made.

(3) If anyone wishes to complain about treatment, conditions, or violations of rights, [he] such person shall write or cause to be written his or her grievance or shall state it orally to the designee no later than fourteen days after the occurrence giving rise to the grievance. When the department receives a complaint that does not contain allegations of abuse or neglect or allegations which would, if substantiated,



constitute violation of a class I or class II standard as defined in section 198.085, and the complainant indicates that the complaint was not filed with the facility prior to the reporting of it to the department, the department may in such instances refer the complaint to the staff person who is designated by the facility to receive all grievances when they are first made. In such instances the department shall assure appropriate response from the facility, assure resolution at a subsequent on-site visit and provide a report to the complainant. The designee shall confer with persons involved in the occurrence and with any other witnesses and, no later than three days after the grievance, give a written explanation of findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(4) The department shall establish and implement procedures for the making and transmission of complaints to the department by any person alleging violation of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the standards established thereunder. The department shall promptly review each complaint. In the case of a refusal to investigate, the department shall promptly notify the complainant of its refusal and the reasons therefor; and in every other case, the department shall, following investigation, notify the complainant of its investigation and any proposed action.

4. Whenever the department finds upon investigation that

there have been violations of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or 344, RSMo, the department shall forward a report of its findings to the appropriate licensing or examining board for further investigation.

5. Each facility shall maintain a complete record of complaints and grievances made against such facility and a record of the final disposition of the complaints and grievances. Such record shall be open to inspection by representatives of the department during normal business hours.

6. Nothing in this section shall be construed as requiring a resident to exhaust grievance procedures established by the facility or by the department prior to filing a complaint pursuant to section 198.090.

198.090. 1. An operator may make available to any resident the service of holding in trust personal possessions and funds of the resident and shall, as authorized by the resident, expend the funds to meet the resident's personal needs. In providing this service the operator shall:

(1) At the time of admission, provide each resident or [his] the resident's next of kin or legal guardian with a written statement explaining the resident's rights regarding personal funds;

(2) Accept funds and personal possessions from or for a resident for safekeeping and management, only upon written authorization by the resident or by [his] the resident's

designee, or guardian in the case of an adjudged incompetent;

(3) Deposit any personal funds received from or on behalf of a resident in an account separate from the facility's funds, except that an amount to be established by rule of the [division of aging] department may be kept in a petty cash fund for the resident's personal needs;

(4) Keep a written account, available to a resident and [his] a resident's designee or guardian, maintained on a current basis for each resident, with written receipts, for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident;

(5) Provide each resident or [his] the resident's designee or guardian with a quarterly accounting of all financial transactions made on behalf of the resident;

(6) Within five days of the discharge of a resident, provide the resident, or [his] the resident's designee or guardian, with an up-to-date accounting of the resident's personal funds and return to the resident the balance of [his] the resident's funds and all [his] the resident's personal possessions;

(7) Upon the death of a resident who has been a recipient of aid, assistance, care, services, or who has had moneys expended on his or her behalf by the department of social services, provide the department a complete account of all the resident's personal funds within sixty days from the date of death. The total amount paid to the decedent or expended upon his or her behalf by the department shall be a debt due the state and recovered from the available funds upon the department's

claim on such funds. The department shall make a claim on the funds within sixty days from the date of the accounting of the funds by the facility. The nursing facility shall pay the claim made by the department of social services from the resident's personal funds within sixty days. Where the name and address are reasonably ascertainable, the department of social services shall give notice of the debt due the state to the person whom the recipient had designated to receive the quarterly accounting of all financial transactions made [under] pursuant to this section, or the resident's guardian or conservator or the person or persons listed in nursing home records as a responsible party or the fiduciary of the resident's estate. If any funds are available after the department's claim, the remaining provisions of this section shall apply to the balance, unless the funds belonged to a person other than the resident, in which case the funds shall be paid to that person;

(8) Upon the death of a resident who has not been a recipient of aid, assistance, care, services, or who has not had moneys expended on his or her behalf by the department of social services or the department has not made a claim on the funds, provide the fiduciary of resident's estate, at the fiduciary's request, a complete account of all the resident's personal funds and possessions and deliver to the fiduciary all possessions of the resident and the balance of the resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such funds or possessions, the operator shall notify the department that the funds remain unclaimed. Such unclaimed funds or possessions shall be disposed of as follows:

(a) If the unclaimed funds or possessions have a value totaling one hundred and fifty dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund to be used for the benefit of all residents of the facility by providing the residents social or educational activities. The facility shall keep an accounting of the acquisitions and expenditure of these funds; or

(b) If the unclaimed funds or possessions have a value greater than one hundred and fifty dollars, the funds or possessions shall be immediately presumed to be abandoned property [under] pursuant to sections 447.500 to 447.585, RSMo, and the procedures provided for in those sections shall apply notwithstanding any other provisions of those sections which require a period greater than two years for a presumption of abandonment;

(9) Upon ceasing to be the operator of a facility, all funds and property held in trust pursuant to this section shall be transferred to the new operator in accordance with sound accounting principles, and a closeout report signed by both the outgoing operator and the successor operator shall be prepared. The closeout report shall include a list of current balances of all funds held for residents respectively and an inventory of all property held for residents respectively. If the outgoing operator refuses to sign the closeout report, he or she shall state in writing the specific reasons for his or her failure to so sign, and the successor operator shall complete the report and attach an affidavit stating that the information contained therein is true to the best of his or her knowledge and belief.

Such report shall be retained with all other records and accounts required to be maintained [under] pursuant to this section;

(10) Not be required to invest any funds received from or on behalf of a resident, nor to increase the principal of any such funds.

2. Any owner, operator, manager, employee, or affiliate of an owner or operator who receives any personal property or anything else of value from a resident, shall, if the thing received has a value of ten dollars or more, make a written statement giving the date it was received, from whom it was received, and its estimated value. Statements required to be made pursuant to this subsection shall be retained by the operator and shall be made available for inspection by the department, or by the department of mental health when the resident has been placed by that department, and by the resident, and [his] the resident's designee or legal guardian. Any person who fails to make a statement required by this subsection is guilty of a class C misdemeanor.

3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in one calendar year receive any personal property or anything else of value from the residents of any facility which have a total estimated value in excess of one hundred dollars.

4. Subsections 2 and 3 of this section shall not apply if the property or other thing of value is held in trust in accordance with subsection 1 of this section, is received in payment for services rendered or pursuant to the terms of a lawful contract, or is received from a resident who is related to

the recipient within the fourth degree of consanguinity or affinity.

5. Any operator who fails to maintain records or who fails to maintain any resident's personal funds in an account separate from the facility's funds as required by this section shall be guilty of a class C misdemeanor.

6. Any operator, or any affiliate or employee of an operator, who puts to his or her own use or the use of the facility or otherwise diverts from the resident's use any personal funds of the resident shall be guilty of a class A misdemeanor.

7. Any person having reasonable cause to believe that a misappropriation of a resident's funds or property has occurred may report such information to the department.

8. For each report the [division] department shall attempt to obtain the name and address of the facility, the name of the facility employee, the name of the resident, information regarding the nature of the misappropriation, the name of the complainant, and any other information which might be helpful in an investigation.

9. Upon receipt of a report, the department shall initiate an investigation.

10. If the investigation indicates probable misappropriation of property or funds of a resident, the investigator shall refer the complaint together with [his] the investigator's report to the department director or [his] the director's designee for appropriate action.

11. Reports shall be confidential, as provided [under

section 660.320] pursuant to section 187.087, RSMo.

12. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

13. Within five working days after a report required to be made [under] pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

14. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because [he] the resident or employee or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he or she has reasonable cause to believe has been committed or has occurred.

15. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section [660.315] 187.080, RSMo, to have misappropriated any property or funds of a resident while employed in any facility.

198.093. 1. Any resident or former resident who is deprived of any right created by sections 198.088 and 198.090, or



the estate of a former resident so deprived, may file a written complaint within [one hundred eighty days] two years of the alleged deprivation or injury with the office of the attorney general describing the facts surrounding the alleged deprivation. A copy of the complaint shall be sent to the department by the attorney general.

2. The attorney general shall review each complaint and may initiate legal action as provided under sections 198.003 to 198.186.

3. If the attorney general fails to initiate a legal action within sixty days of receipt of the complaint, the complainant may, within two hundred forty days of filing the complaint with the attorney general, bring a civil action in an appropriate court against any owner, operator or the agent of any owner or operator to recover actual damages. The court may, in its discretion, award punitive damages which shall be limited to the larger of five hundred dollars or five times the amount of special damages, unless the deprivation complained of is the result of an intentional act or omission causing physical or emotional injury to the resident, and may award to the prevailing party attorney's fees based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper; except that, an attorney who is paid in whole or part from public funds for his or her representation in any cause arising under this section shall not be awarded any attorney fees.

4. No owner or operator who pleads and proves as an affirmative defense that he or she exercised all care reasonably

necessary to prevent the deprivation and injury for which liability is asserted shall be liable under this section.

5. Persons bringing suit to recover against a bond for personal funds pursuant to section 198.096 shall not be required to first file a complaint with the attorney general pursuant to subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to recover on such bond.

6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating, abridging or otherwise limiting the right of any person to bring appropriate legal actions in any court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall any provision of the above-named sections be construed as preventing or discouraging any person from filing a complaint with the department or notifying the department of any alleged deficiency or noncompliance on the part of any facility.

198.345. Nothing in sections 198.200 to 198.350 shall prohibit a nursing home district from establishing and maintaining senior housing within its corporate limits.

198.525. Except as otherwise provided for in section 198.526, in order to comply with sections 198.012 and 198.022, the department of health and senior services shall inspect residential care facilities II, intermediate care facilities and skilled nursing facilities attached to acute care hospitals at least twice a year.

198.526. 1. Except as provided for in subsection 3 of this section, the [division of aging] department of health and senior services shall inspect all facilities licensed by the [division]

department at least twice each year. Such inspections shall be conducted:

- (1) Without the prior notification of the facility; and
- (2) At times of the day, on dates and at intervals which do not permit facilities to anticipate such inspections.

2. The [division] department shall annually reevaluate the inspection process to ensure the requirements [of subsection 1] of this section are met.

3. The department may reduce the frequency of inspections to once a year if:

(1) The facility has no class I deficiencies or class II violations related to the direct care of residents during an original inspection. A finding of substantial compliance after one or more revisits to an original inspection does not satisfy the requirements of this subdivision;

(2) In the year subsequent to a finding of no class I deficiencies or class II violations related to the direct care of residents pursuant to subdivision (1) of this subsection, the facility has no substantiated complaints involving class I deficiencies or class II violations related to the direct care of residents; and

(3) In the year subsequent to a finding of no class I deficiencies or class II violations related to the direct care of residents pursuant to subdivision (1) of this subsection, the facility does not have a change in ownership, operator, or director of nursing.

4. Notwithstanding any other provision of law to the contrary, the department may inspect any facility at any time.

The department may, but is not required, to conduct an inspection in connection with the investigation of any complaint filed against any facility. Federal laws and rules governing surveys of facilities are not affected by the provisions of this or any other provision of state law.

5. Any employee who knowingly discloses the time of an unannounced inspection to any person not involved in inspection and enforcement functions is guilty of a class A misdemeanor and shall have his or her employment immediately terminated.

198.531. 1. The [division of aging] department of health and senior services, in collaboration with qualified Missouri schools and universities, shall establish an aging-in-place pilot program at a maximum of four selected sites throughout the state which will provide a continuum of care for elders who need long-term care. For purposes of this section, "qualified Missouri schools and universities" means any Missouri school or university which has a school of nursing, a graduate nursing program, or any other similar program or specialized expertise in the areas of aging, long-term care or health services for the elderly.

2. The pilot program shall:

(1) Deliver a full range of physical and mental health services to residents in the least restrictive environment of choice to reduce the necessity of relocating such residents to other locations as their health care needs change;

(2) Base licensure on services provided rather than on facility type, which licensure shall be based on the highest level of service provided at a given site; and

(3) Be established in selected urban, rural and regional sites throughout the state.

3. The directors of the [division of aging and division of medical services] departments of health and senior services and social services, or their designees, shall apply for all federal waivers necessary to provide Medicaid reimbursement for health care services received through the aging-in-place pilot program.

4. The [division of aging] department of health and senior services shall monitor the pilot program and report to the general assembly, not later than January 1, 2008, on the effectiveness of such program, including quality of care, resident satisfaction, and cost-effectiveness [to include] and the cost equivalent of unpaid or volunteer labor. Pilot program success and effectiveness shall be used to establish appropriate licensure categories, including new categories if found to be appropriate, for the provision of such services. The department of health and senior services may, for the purpose of implementing and evaluating the effectiveness of the pilot program, grant exceptions to sections 198.003 to 198.186, during the pilot program period if the department has determined that the exception would not potentially jeopardize the health, safety or welfare of any resident of the aging-in-place pilot program.

5. Developments authorized by this section shall be exempt from the provisions of sections 197.300 to 197.367, RSMo, and shall be licensed by the [division of aging] department of health and senior services pursuant to sections 198.003 to 198.186.

198.532. Complaints filed with the [division of aging]

department of health and senior services against a long-term care facility which allege that harm has occurred or is likely to occur to a resident or residents of the facility due to actions or the lack of actions taken by the facility shall be investigated within thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure the safety, protection and care of all residents of the facility likely to be affected by the alleged action or inaction. Such investigation shall be in addition to the investigation requirements for abuse and neglect reports pursuant to [section 198.070] sections 187.020 to 187.028, RSMo. The [division] department shall provide the results of all investigations in accordance with section [660.320] 187.087, RSMo. The [division] department shall provide the results of such investigation in writing to all parties to the complaint, and if requested, to any of the facility's residents, or their family members or guardians. Complaints and written results will be readily available for public access and review at the [division of aging] department of health and senior services and at the long-term care facility. Personal information identifying the resident will be blanked out, except in regard to immediate family, the attorney-in-fact or the legal guardian of the resident in question. This information will remain readily available for a period of time determined by the [division of aging] department.

208.156. 1. The division of family services shall provide for granting an opportunity for a fair hearing under section 208.080 to any applicant or recipient whose claim for medical assistance is denied or is not acted upon with reasonable

promptness.

2. Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 whose claim for reimbursement for such services is denied or is not acted upon with reasonable promptness shall be entitled to a hearing before the administrative hearing commission pursuant to the provisions of chapter 621, RSMo.

3. Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 who is denied participation in any program or programs established under the provisions of chapter 208 shall be entitled to a hearing before the administrative hearing commission pursuant to the provisions of chapter 621, RSMo.

4. Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 who is aggrieved by any rule or regulation promulgated by the department of social services or any division therein shall be entitled to a hearing before the administrative hearing commission pursuant to the provisions of chapter 621, RSMo.

5. Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 who is aggrieved by any rule or regulation, contractual agreement, or decision, as provided for in section 208.166, by the department of social services or any division therein shall be entitled to a hearing before the administrative hearing commission pursuant to the provisions of chapter 621, RSMo.

6. No provider of service may file a petition for a hearing before the administrative hearing commission unless the amount

for which he seeks reimbursement exceeds five hundred dollars.

7. One or more providers of service as will fairly insure adequate representation of others having similar claims against the department of social services or any division therein may institute the hearing on behalf of all in the class if there is a common question of law or fact affecting the several rights and a common relief is sought.

8. Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 and who is entitled to a hearing as provided for in the preceding sections shall have thirty days from the date of mailing or delivery of a decision of the department of social services or its designated division in which to file his or her petition for review with the administrative hearing commission except that claims of less than five hundred dollars may be accumulated until they total that sum and at which time the provider shall have ninety days to file his or her petition.

9. When a person entitled to a hearing as provided for in this section applies to the administrative hearing commission for a stay order staying the actions of the department of social services or its divisions, the administrative hearing commission shall not grant such stay order until after a full hearing on such application. The application shall be advanced on the docket for immediate hearing and determination. The administrative hearing commission shall accept evidence on and consider the effect of the provider's continued participation in the program on the health, safety, and welfare of the clients and the program. The person applying for such stay order shall not



be granted such stay order unless that person [shall show that immediate and irreparable injury, loss, or damage will result if such stay order is denied, or that such person] has a reasonable likelihood of success upon the merits of his or her claim; and provided further that no stay order shall be issued without the person seeking such order posting a bond in such sum as the administrative hearing commission finds sufficient to protect and preserve the interest of the department of social services or its divisions. In no event may the administrative hearing commission grant such stay order where the claim arises under a program or programs funded by federal funds or by any combination of state and federal funds, unless it is specified in writing by the financial section of the appropriate federal agency that federal financial participation will be continued under the stay order. If a stay is granted and as a condition of the stay, the administrative hearing commission shall require the provider under the stay to operate under the same contractual requirements as all other providers in the program.

10. The other provisions of this section notwithstanding, a person receiving or providing benefits shall have the right to bring an action in appealing from the administrative hearing commission in the circuit court of Cole County, Missouri, or the county of his or her residence pursuant to section 536.050, RSMo.

210.933. For any elder-care worker listed in the registry or who has submitted the registration form as required by sections 210.900 to 210.936, an elder-care provider may access the registry in lieu of the requirements established pursuant to section [660.315] 187.080, RSMo, or to subsections 3, 4 and 5 of

section [660.317] 187.084, RSMo.

210.936. For purposes of providing background information pursuant to sections 210.900 to 210.936, reports and related information pursuant to sections [198.070 and] 187.020 to 187.028, 187.050 and 187.080, RSMo, section 198.090, RSMo, sections 210.109 to 210.183, and section 630.170, RSMo, [and sections 660.300 to 660.317, RSMo,] shall be deemed public records.

344.050. 1. The board may refuse to issue or renew any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found

guilty, or entered a plea of guilty or nolo contendere, pursuant to criminal prosecution [under] pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated [under] pursuant to this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license, or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or

other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged incapacitated or disabled by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice [under] pursuant to this chapter;

(11) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(12) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(13) Knowingly failing to report abuse or neglect of a resident in a long-term care facility, as required by section [198.070] 187.020, RSMo, of which he has actual knowledge that it is abuse or neglect.

3. The administrative hearing commission shall have no authority to require issuance of a license, pending a final determination by the commission, in any case in which an applicant is seeking initial licensure.

4. No license may be suspended or revoked and no application for renewal of a license may be denied [under] pursuant to this section until the licensee has been afforded an opportunity for hearing after due notice as provided in sections 621.015 to 621.205, RSMo.

5. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, place upon probation, suspend or revoke a certificate of registration or authority, permit or license.

354.407. Notwithstanding the provisions of section 354.405 to the contrary, a program for all-inclusive care for the elderly (PACE) project sponsored by a religious or charitable organization that is itself or is controlled by an entity organized under Section 501(c)(3) of the Internal Revenue Code and which has had its application for the operation of a PACE program approved by the Center for Medicare and Medicaid Services of the federal Department of Health and Human Services and is operating under such approval shall not be deemed to be engaged in any business required to be licensed pursuant to section 354.405. Such exemption shall apply only to business conducted pursuant to the approved PACE contract and not to any other business that such organization may conduct.

491.076. 1. Any statement by an elderly or disabled person, as defined in section 660.053, RSMo, made at or near the time of an alleged crime or other misconduct toward such elderly or disabled person shall be admissible into evidence in criminal, civil and administrative proceedings in this state as substantive evidence to prove the truth of the matter asserted if:

(1) The person is unavailable as a witness at the time of the criminal, civil or administrative proceeding due to the person's physical or mental condition; and

(2) The court finds, in a hearing conducted outside the

presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability and the declarant was competent.

2. A statement may not be admitted pursuant to this section unless the party offering the statement makes known to the other party or the other party's counsel his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the other party or the other party's counsel with a fair opportunity to prepare to meet the statement.

3. Nothing in this section shall be construed to limit the admissibility of statements, admissions or confessions otherwise admissible by law.

565.200. 1. Any owner or employee of a skilled nursing facility, as defined in section 198.006, RSMo, or an Alzheimer's special unit or program, as defined in section 198.505, RSMo, who:

(1) Has sexual contact, as defined in section 566.010, RSMo, with a resident is guilty of a class B misdemeanor. Any person who commits a second or subsequent violation of this subdivision is guilty of a class A misdemeanor; or

(2) Has sexual intercourse or deviate sexual intercourse, as defined in section 566.010, RSMo, with a resident is guilty of a class D felony. Any person who commits a second or subsequent violation of this subdivision is guilty of a class C felony.

2. The provisions of this section shall not apply to an owner or employee of a skilled nursing facility or Alzheimer's special unit or program who engages in sexual conduct, as defined

in section 566.010, RSMo, with a resident to whom the owner or employee is married.

3. Consent of the victim is not a defense to a prosecution pursuant to this section.

630.140. 1. Information and records compiled, obtained, prepared or maintained by the residential facility, day program operated, funded or licensed by the department or otherwise, specialized service, or by any mental health facility or mental health program in which people may be civilly detained pursuant to chapter 632, RSMo, in the course of providing services to either voluntary or involuntary patients, residents or clients shall be confidential.

2. The facilities or programs shall disclose information and records including medication given, dosage levels, and individual ordering such medication to the following upon their request:

- (1) The parent of a minor patient, resident or client;
- (2) The guardian or other person having legal custody of the patient, resident or client;
- (3) The attorney of a patient, resident or client who is a ward of the juvenile court, an alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as evidenced by court orders of the attorney's appointment;
- (4) An attorney or personal physician as authorized by the patient, resident or client;
- (5) Law enforcement officers and agencies, information about patients, residents or clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out

the responsibilities of their office, and all such law enforcement officers shall be obligated to keep such information confidential;

(6) The entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042. The entity or agency shall be able to obtain access to the records of a person with developmental disabilities who is a client of the entity or agency if such person has authorized the entity or agency to have such access; and the records of any person with developmental disabilities who, by reason of mental or physical condition is unable to authorize the entity or agency to have such access, if such person does not have a legal guardian, conservator or other legal representative, and a complaint has been received by the entity or agency with respect to such person or there is probable cause to believe that such person has been subject to abuse or neglect. The entity or agency obtaining access to a person's records shall meet all requirements for confidentiality as set out in this section;

(7) The entity or agency authorized to implement a system to protect and advocate the rights of persons with mental illness under the provisions of 42 U.S.C 10801 shall be able to obtain access to the records of a patient, resident or client who by reason of mental or physical condition is unable to authorize the system to have such access, who does not have a legal guardian, conservator or other legal representative and with respect to whom a complaint has been received by the system or there is probable cause to believe that such individual has been subject



to abuse or neglect. The entity or agency obtaining access to a person's records shall meet all requirements for confidentiality as set out in this section. The provisions of this subdivision shall apply to a person who has a significant mental illness or impairment as determined by a mental health professional qualified under the laws and regulations of the state;

(8) To mental health coordinators, but only to the extent necessary to carry out their duties under chapter 632, RSMo.

3. The facilities or services may disclose information and records under any of the following:

(1) As authorized by the patient, resident or client;

(2) To persons or agencies responsible for providing health care services to such patients, residents or clients;

(3) To the extent necessary for a recipient to make a claim or for a claim to be made on behalf of a recipient for aid or insurance;

(4) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations or similar studies; provided, that such personnel shall not identify, directly or indirectly, any individual patient, resident or client in any report of such research, audit or evaluation, or otherwise disclose patient, resident or client identities in any manner;

(5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo, 552, RSMo, or 632, RSMo;

(6) To law enforcement officers or public health officers, but only to the extent necessary to carry out the responsibilities of their office, and all such law enforcement

and public health officers shall be obligated to keep such information confidential;

(7) Pursuant to an order of a court or administrative agency of competent jurisdiction;

(8) To the attorney representing petitioners, but only to the extent necessary to carry out their duties under chapter 632, RSMo;

(9) To the department of social services or the department of health and senior services as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents, or clients;

(10) To a county board established pursuant to sections 205.968 to 205.972, RSMo 1986, but only to the extent necessary to carry out their statutory responsibilities. The county board shall not identify, directly or indirectly, any individual patient, resident or client.

4. The facility or program shall document the dates, nature, purposes and recipients of any records disclosed under this section and sections 630.145 and 630.150.

5. The records and files maintained in any court proceeding under chapter 632, RSMo, shall be confidential and available only to the patient, his attorney, guardian, or, in the case of a minor, to a parent or other person having legal custody of the patient, and to the petitioner and his attorney. In addition, the court may order the release or use of such records or files only upon good cause shown, and the court may impose such restrictions as the court deems appropriate. 6. Nothing contained in this chapter shall limit the rights of discovery in

judicial or administrative procedures as otherwise provided for by statute or rule.

7. The fact of admission of a voluntary or involuntary patient to a mental health facility under chapter 632, RSMo, may only be disclosed as specified in subsections 2 and 3 of this section.

630.167. 1. Upon receipt of a report, the department or its agents, contractors or vendors or the department of health and senior services, if such facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

2. If the investigation indicates possible abuse or neglect of a patient, resident or client, the investigator shall refer the complaint together with the investigator's report to the department director for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal from a facility not operated or funded by the department is necessary to protect the residents from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the residents in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident for a period not to exceed thirty days.

3. (1) Reports referred to in section 630.165 and the

investigative reports referred to in this section shall be confidential, shall not be deemed a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that: complete copies all such reports shall be open and available to the parents or other guardian of the patient, resident, or client who is the subject of such report, except that the names and any other descriptive information of the complainant or other person mentioned in the reports shall not be disclosed unless such complainant or person specifically consents to such disclosure. All reports referred to in this section shall be admissible in any judicial proceedings or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department of mental health, or the director's designee. All such reports may be disclosed by the department of mental health to law enforcement officers and public health officers, but only to the extent necessary to carry out the responsibilities of their offices, and to the department of social services and the department of health and senior services, and to boards appointed pursuant to sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or client as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents or clients provided that all such law enforcement officers, public health officers, department of social services' officers, department of health and senior services' officers, and boards shall be obligated to keep such information confidential;

(2) Except as otherwise provided in this section, the

proceedings, findings, deliberations, reports and minutes of committees of health care professionals as defined in section 537.035, RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the responsibility to evaluate, maintain, or monitor the quality and utilization of mental health services are privileged and shall not be subject to the discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible into evidence into any judicial or administrative action for failure to provide adequate or appropriate care. Such committees may exist, either within department facilities or its agents, contractors, or vendors, as applicable. Except as otherwise provided in this section, no person who was in attendance at any investigation or committee proceeding shall be permitted or required to disclose any information acquired in connection with or in the course of such proceeding or to disclose any opinion, recommendation or evaluation of the committee or board or any member thereof; provided, however, that information otherwise discoverable or admissible from original sources is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before any committee or in the course of any investigation, nor is any member, employee or agent of such committee or other person appearing before it to be prevented from testifying as to matters within their personal knowledge and in accordance with the other provisions of this section, but such witness cannot be questioned about the testimony or other proceedings before any investigation or before any committee;

(3) Nothing in this section shall limit authority otherwise provided by law of a health care licensing board of the state of Missouri to obtain information by subpoena or other authorized process from investigation committees or to require disclosure of otherwise confidential information relating to matters and investigations within the jurisdiction of such health care licensing boards; provided, however, that such information, once obtained by such board and associated persons, shall be governed in accordance with the provisions of this subsection;

(4) Nothing in this section shall limit authority otherwise provided by law in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042 and the entity or agency authorized to implement a system to protect and advocate the rights of persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this section shall serve to negate assurances that have been given by the governor of Missouri to the U.S. Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services concerning access to records by the agency designated as the protection and advocacy system for the state of Missouri. However, such information, once obtained by such entity or agency, shall be governed in accordance with the provisions of this subsection.

4. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding

arising from the report shall be immune from any civil liability for making such a report or for testifying unless such person acted in bad faith or with malicious purpose.

5. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

6. No person who directs or exercises any authority in a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he or she has reasonable cause to believe has been committed or has occurred.

7. Any person who is discharged as a result of an administrative substantiation of allegations contained in a report of abuse or neglect may, after exhausting administrative remedies as provided in chapter 36, RSMo, appeal such decision to the circuit court of the county in which such person resides within ninety days of such final administrative decision. The court may accept an appeal up to twenty-four months after the party filing the appeal received notice of the department's determination, upon a showing that:

(1) Good cause exists for the untimely commencement of the request for the review;

(2) If the opportunity to appeal is not granted it will adversely affect the party's opportunity for employment; and

(3) There is no other adequate remedy at law.

660.030. 1. No legally recognized privilege, except the privileges provided by sections 491.060(3) and 491.060(4), RSMO, shall exempt a person from the reporting requirements of sections 187.020, 187.050 and 187.080 to 187.087, RSMo, and sections 660.250 to 660.295, or permit a person to refuse to cooperate fully with or refuse access to records by the department of health and senior services in any of its investigations or activities initiated pursuant to sections 187.020, 187.050 and 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or permit a person to refuse to give or receive evidence in any judicial proceeding relating to the likelihood of harm to an eligible adult, as defined in section 660.250.

2. Notwithstanding any other provision of law to the contrary, in any investigation conducted or action brought by the department of health and senior services pursuant to any chapter relating to the care and protection of an eligible adult, the department and any of its personnel shall have access to all financial, medical and mental health records of any such eligible adult regardless of the institution, facility or entity in possession of such records.

660.050. 1. The "Division of Aging" is hereby transferred from the department of social services to the department of health and senior services by a type I transfer as defined in the Omnibus State Reorganization Act of 1974. The division shall aid and assist the elderly and low-income handicapped adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The division shall



regulate adult long-term care facilities pursuant to the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities.

2. In addition to its duties and responsibilities enumerated pursuant to other provisions of law, the division shall:

(1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

(2) Assure that an information and referral system is developed and operated for the elderly, including information on the Missouri care options program;

(3) Provide technical assistance, planning and training to local area agencies on aging;

(4) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;

(5) Serve as liaison between the department of health and senior services and the Federal Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United States Department of Health and Human Services;

(6) Conduct medical review (inspections of care) activities such as utilization reviews, independent professional reviews, and periodic medical reviews to determine medical and social needs for the purpose of eligibility for Title XIX, and for level of care determination;

(7) Certify long-term care facilities for participation in the Title XIX program;

(8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for Supplemental Security Income recipients in long-term care facilities and serve as the liaison between the Social Security Administration and the department of health and senior services concerning Supplemental Security Income beneficiaries;

(9) Review plans of proposed long-term care facilities before they are constructed to determine if they meet applicable state and federal construction standards;

(10) Provide consultation to long-term care facilities in all areas governed by state and federal regulations;

(11) Serve as the central state agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for elderly persons in Missouri consistent with the provisions of subsection 1 of this section and serve as the designated state unit on aging, as defined in the Older Americans Act of 1965;

(12) With the advice of the governor's advisory council on aging, develop long-range state plans for programs, services, and activities for elderly and handicapped persons. State plans should be revised annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;

(13) Receive and disburse all federal and state funds allocated to the division and solicit, accept, and administer grants, including federal grants, or gifts made to the division

or to the state for the benefit of elderly persons in this state;

(14) Serve, within government and in the state at large, as an advocate for elderly persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied;

(15) Provide information and technical assistance to the governor's advisory council on aging and keep the council continually informed of the activities of the division;

(16) After consultation with the governor's advisory council on aging, make recommendations for legislative action to the governor and to the general assembly;

(17) Conduct research and other appropriate activities to determine the needs of elderly persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons to meet those needs;

(18) Maintain and serve as a clearinghouse for up-to-date information and technical assistance related to the needs and interests of elderly persons and persons with Alzheimer's disease or related dementias, including information on the Missouri care options program, dementia-specific training materials and dementia-specific trainers. Such dementia-specific information and technical assistance shall be maintained and provided in consultation with agencies, organizations and/or institutions of higher learning with expertise in dementia care;

(19) Provide area agencies on aging with assistance in applying for federal, state, and private grants and identifying new funding sources;

(20) Determine area agencies on aging annual allocations for Title XX and Title III of the Older Americans Act expenditures;

(21) Provide transportation services, home-delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income handicapped adults as designated in the Social Services Block Grant Report, through contract with other agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the division;

(22) Monitor the process pursuant to the federal Patient Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients concerning durable powers of attorney and living wills.

3. The division director, subject to the supervision of the director of the department of health and senior services, shall be the chief administrative officer of the division and shall exercise for the division the powers and duties of an appointing authority pursuant to chapter 36, RSMo, to employ such administrative, technical and other personnel as may be necessary for the performance of the duties and responsibilities of the division.

4. The division may withdraw designation of an area agency on aging only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not

being expended for the purposes for which they were intended, or the elderly are not receiving appropriate services within available resources, and after consultation with the director of the area agency on aging and the area agency board. Withdrawal of any particular program of services may be appealed to the director of the department of health and senior services and the governor. In the event that the division withdraws the area agency on aging designation in accordance with the Older Americans Act, the division shall administer the services to clients previously performed by the area agency on aging until a new area agency on aging is designated.

5. Any person hired by the department of health and senior services after August 13, 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection process and applicable rules and statutes during the first six months of employment. Any such person shall annually, on the anniversary date of employment, present to the department evidence of having completed at least twenty hours of continuing education in at least two of the following categories: communication techniques, skills development, resident care, or policy update. The department of health and senior services shall by rule describe the curriculum and structure of such continuing education.

6. The division may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in this section and sections [198.070 and] 187.020 to 187.034, 187.050 and 187.080 to 187.087, RSMo, section 198.090, RSMo, and

[sections 660.250 and 660.300 to 660.320] section 660.250. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

7. Missouri care options is a program, operated and coordinated by the division of aging, which informs individuals of the variety of care options available to them when they may need long-term care.

8. The division shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by skilled nursing facilities, intermediate care facilities, residential care facilities, agencies providing in-home care services authorized by the division of aging, adult day-care programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias and the division of aging. Such training shall be incorporated into new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The department of health and

senior services shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

(1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;

(2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.

As used in this subsection, the term "employee" includes persons hired as independent contractors. The training requirements of this subsection shall not be construed as superceding any other laws or rules regarding dementia-specific training.

660.252. 1. All Medicaid participation agreements entered into between the department of social services and in-home services provider agencies shall include a requirement that all

in-home services employees of such agencies receive training on identification and prevention of elder abuse and neglect.

2. All Medicaid participation agreements entered into between the department of social services and long-term care facilities shall include a requirement that such facilities comply with the provisions of sections 660.600 to 660.608 regarding access to such facilities by ombudsmen, or representatives of the office of the state ombudsmen for long-term care facility residents and the office of advocacy and assistance for the elderly pursuant to chapter 660.

660.263. 1. Reports made pursuant to sections 660.250 to 660.295 shall be confidential and shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo.

2. Such reports shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

(1) The department or any person or agency designated by the department;

(2) The attorney general;

(3) The department of mental health for persons referred to, from, or through that department;

(4) Any appropriate law enforcement agency; and

(5) The eligible adult or [his] such adult's legal guardian or any other person designated by the eligible adult.

3. The name of the reporter shall not be disclosed unless:

(1) Such reporter specifically authorizes disclosure of his or her name; and



(2) The department determines that disclosure of the name of the reporter is necessary in order to prevent further harm to an eligible adult.

4. Any person who violates the provisions of this section, or who permits or encourages the unauthorized dissemination of information contained in the central registry and in reports and records made pursuant to sections 660.250 to 660.295, shall be guilty of a class A misdemeanor. 5. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording.

6. Although reports to the central registry may be made anonymously, the department shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect, attempt to obtain the name and address of any person making a report.

660.270. When the department receives a report that there is a likelihood of [serious physical harm] abuse or neglect, as defined in section 660.250, to an eligible adult and that [he is] such adult may be in need of protective services and the department is unable to conduct an investigation because any person has prevented such investigation, including but not limited to denial of access to the eligible adult [is barred by

any person], the director may petition the appropriate court to enjoin interference with the investigation or for a warrant to enter upon the described premises and investigate the report. The application for the injunction or warrant shall identify the eligible adult and the facts and circumstances which require the issuance of the injunction or warrant. [The director may also seek an order to enjoin the person barring access from interfering with the investigation.] If the court finds that, based on the report and relevant circumstances and facts, probable cause exists showing that the eligible adult faces a likelihood of [serious physical harm and is] abuse or neglect, as defined in section 660.250, and may be in need of protective services and the director has been prevented by another person from investigating the report, including but not limited to denial of access to the eligible adult, the court may issue the warrant or enjoin the interference with the investigation or both.

660.302. The department of health and senior services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295 and notwithstanding any other provision of the law to the contrary, shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement agency and prosecutor and determine whether protective services are required pursuant to sections 660.250 to 660.295.

Section 1. In order to protect the community spouse of an individual living in a residential care facility I or residential care facility II, as defined in Section 198.006, RSMo, from

impoverishment and to prevent premature placement in a more expensive, more restrictive environment, the division of family services shall comply with the provisions of subsection 6 of section 208.010, RSMo, when determining the eligibility for benefits pursuant to section 208.030, RSMo.

Section 2. 1. A skilled nursing facility subject to the provisions of this section shall not discharge, demote, threaten, or otherwise discriminate against any individual or employee with respect to compensation, terms, conditions, or privileges of employment because such individual or employee, or any person acting at the request of the employee, provided or attempted to provide information to the division of medical services regarding possible violations of section 1 of this act.

2. Any individual, employee, or former employee subject to this section who believes that he or she has been discharged or otherwise discriminated against in violation of this section may file a civil action within three years of the date of such discharge or discrimination.

3. If a court of competent jurisdiction finds by a preponderance of the evidence that a violation of this section has occurred, the court may grant such relief as it may consider appropriate, including but not limited to:

(1) Reinstatement of the employee to the employee's former position;

(2) Compensatory damages, costs, and reasonable attorney fees; and

(3) Other relief to remedy the past discrimination.

4. The protections of this section shall not apply to any

individual, employee, or former employee who:

(1) Deliberately causes or participates in the alleged violation of law or rule; or

(2) Knowingly or recklessly provides substantially false information to the division of medical services.

Section 3. A Joint Committee on Nursing Home Medicaid Reimbursement shall be established for the purpose of reviewing the rate-setting process to make recommendations regarding the equity of Medicaid reimbursement of nursing homes. The committee shall consist of five members of the House appointed by the Speaker of the House and five members of the Senate appointed by the President Pro Tem, with no more than three members of the same party from each chamber.

[197.367 Upon application for renewal by any residential care facility I or II which on the effective date of this act has been licensed for more than five years, is licensed for more than fifty beds and fails to maintain for any calendar year its occupancy level above thirty percent of its then licensed beds, the division of aging shall license only fifty beds for such facility.]

[198.070. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, facility administrator, employee in a facility, or employee of the department of social services or of the department of mental health, coroner, dentist, hospital and clinic personnel engaged in examination, other health practitioners, mental health professional, adult day care worker, probation or parole officer, law enforcement official or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.

2. The report shall contain the name and address

of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within a reasonable time after the act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

4. In addition to those persons required to report pursuant to subsection 1 of this section, any other person having reasonable cause to believe that a resident has been abused or neglected may report such information to the department.

5. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours and, as soon as possible during the course of the investigation, shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated. As provided in section 565.186, RSMo, substantiated reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency and prosecutor.

6. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

7. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

8. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted in bad faith or

with malicious purpose. It is a crime pursuant to section 565.186 and 565.188, RSMo, for any person to purposely file a false report of elder abuse or neglect.

9. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

10. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing division of aging information and referral telephone contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

11. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of a class D felony.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 660.315, RSMo, to have recklessly, knowingly or purposely abused or neglected a resident while employed in any facility.

13. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hot-line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.】

【565.186. The department of social services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295, RSMo, and upon substantiation of the report of elder abuse, shall promptly report the incident to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are

required pursuant to sections 660.250 to 660.295, RSMo.]

[565.188. 1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident intern, nurse, hospital and clinic personnel engaged in examination, care or treatment of persons, or other health practitioners, psychologists, mental health professional, social worker, adult day care center worker, nursing home worker, probation or parole officer, Christian Science practitioner, peace officer or law enforcement official, or other person with responsibility for the care of a person sixty years of age or older has reasonable cause to suspect that such a person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances which would reasonably result in abuse or neglect, he shall immediately report or cause a report to be made to the department in accordance with the provisions of sections 660.250 to 660.295, RSMo. Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.

2. Any person who knowingly fails to make a report as required in subsection 1 of this section is guilty of a class A misdemeanor.

3. Any person who purposely files a false report of elder abuse or neglect shall be guilty of a class A misdemeanor.

4. Every person who has been previously convicted of or pled guilty to making a false report to the department and who is subsequently convicted of making a false report under subsection 3 of this section is guilty of a class D felony.

5. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.]

[565.190. Any person, official or institution complying with the provisions of section 565.188 in the making of a report, or in cooperating with the department in any of its activities pursuant to sections 565.186 and 565.188, except any person, official or institution violating section 565.180, 565.182 or 565.184, shall be immune from any civil or criminal liability for making such a report, or in cooperating with the department, unless such person acted negligently, recklessly, in bad faith, or with

malicious purpose.]

[660.300. 1. Beginning January 1, 1993, when any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services owner, in-home services operator, in-home services employee, or employee of the department of social services or of the department of health or of the department of mental health has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he shall immediately report or cause a report to be made to the department.

2. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

3. The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

4. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that an in-home services client has been abused or neglected by an in-home services employee may report such information to the department.

5. Upon receipt of a report, the department shall initiate a prompt and thorough investigation.

6. If the investigation indicates possible abuse or neglect of an in-home services client, the investigator shall refer the complaint together with his report to the department director or his designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the in-home services client from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the in-home services client in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the in-home services client, for



a period not to exceed thirty days.

7. Reports shall be confidential, as provided under section 660.320.

8. Anyone, except any person who has abused or neglected an in-home services client, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

9. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

10. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or an in-home services employee because he or any member of his family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

11. Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client while employed by an in-home services provider agency.]

[660.305. 1. Any person having reasonable cause to believe that a misappropriation of an in-home services client's property or funds, or the falsification of any documents verifying service delivery to the in-home services client has occurred, may report such information to the department.

2. For each report the division shall attempt to obtain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information

which might be helpful in an investigation.

3. Any in-home services provider agency or in-home services employee who puts to his own use or the use of the in-home services provider agency or otherwise diverts from the in-home services client's use any personal property or funds of the in-home services client, or falsifies any documents for service delivery, shall be guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall initiate an investigation.

5. If the investigation indicates probable misappropriation of property or funds, or falsification of any documents for service delivery of an in-home services client, the investigator shall refer the complaint together with his report to the department director or his designee for appropriate action.

6. Reports shall be confidential, as provided under section 660.320.

7. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

8. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

9. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or employee because he or any member of his family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department to, pursuant to section 660.315, have misappropriated any property or funds, or falsified any documents for service delivery of an in-home services client while employed by an in-home services provider agency.]

[660.315. 1. After an investigation and a

determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his last known address that:

(1) An allegation has been made against him, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) His name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) His rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or his designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, he may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without notice by the department, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date therefor.

5. Any hearing shall be conducted in the county of the person's residence by the director of the division of aging or his designee. The provisions of chapter 536, RSMo, for a contested case except those provisions or amendments which are in conflict with this section, shall apply to and govern the proceedings contained in this section and the rights and duties of the parties involved. The person appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

6. Upon the record made at the hearing, the director of the division of aging shall determine all questions presented and shall determine whether the person shall be listed on the employee disqualification

list. The director of the division of aging shall clearly state the reasons for his decision and shall include a statement of findings of fact and conclusions of law pertinent to the questions in issue.

7. A person aggrieved by the decision following the hearing shall be informed of his right to seek judicial review as provided under chapter 536, RSMo. If the person fails to appeal the director's findings, those findings shall constitute a final determination that the person shall be placed on the employee disqualification list.

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department of social services or one of its divisions.

9. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or his designee, based upon the following:

(1) Whether the person acted recklessly, knowingly or purposely, as defined in chapter 562, RSMo;

(2) The degree of the infliction of physical, sexual, or emotional injury or harm; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;

(3) The degree of misappropriation of the property or funds, or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances; and

(6) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the division's requirements.

10. The removal of any person's name from the list under this section shall not prevent the director from keeping records of all acts finally determined to have occurred under this section.

11. The department shall provide the list maintained pursuant to this section to other state departments upon request and to any person, corporation or association who:

(1) Is licensed as an operator under chapter 198, RSMo;

(2) Provides in-home services under contract with the department;

(3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is approved by the department to issue certificates for nursing assistants training; or

(5) Is an entity licensed under chapter 197, RSMo. The department shall inform any person listed above who inquires of the division of aging whether or not a particular name is on the list. The division may require that the request be made in writing.

12. No person, corporation or association who received the employee disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13. Any person who has been listed on the employee disqualification list may request that the director remove his name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.]

[660.317. 1. For the purposes of this section,

the term "provider" means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities; or
- (4) Is an entity licensed pursuant to chapter 197, RSMo;
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540, RSMo.

3. Beginning August 28, 1997, not later than two working days of hiring any person for a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through an employment agency, the employment agency shall prior to sending a temporary employee to a provider:

- (1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence; and

- (2) Make an inquiry to the department of social services, whether the person is listed on the employee disqualification list as provided in section 660.315.

4. When the provider requests a criminal background check pursuant to section 43.530, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check.

5. An applicant for a position to have contact with patients or residents of a provider shall:

- (1) Sign a consent form as required by section 43.540, RSMo, so the provider may request a criminal records review;

- (2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal history"

includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315.

6. An applicant who knowingly fails to disclose his criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo.

7. The highway patrol shall examine whether protocols can be developed to allow a provider to request a statewide fingerprint criminal records review check through local law enforcement agencies.

8. A provider may use a private investigatory agency rather than the highway patrol to do a criminal history records review check, and alternatively, the applicant pays the private investigatory agency such fees as the provider and such agency shall agree.

9. The department of social services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.】

【660.320. Reports confidential under section 198.070, RSMo, and sections 660.300 to 660.315 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

(1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his name;

(2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an

in-home services client;

(3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;

(5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or

(6) Release of a name is requested by the division of family services for the purpose of licensure under chapter 210, RSMo.]